Nos. 87-1022, 87-1112

Supreme Court, U.S.
FILED
JUN 13 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1987

THE BOARD OF ESTIMATE, THE CITY OF NEW YORK, EDWARD I. KOCH, individually and as Mayor of New York, ANDREW STEIN, individually and as City Council President, HARRISON J. GOLDIN, individually and as Comptroller for the City of New York, HOWARD GOLDEN, DAVID N. DINKINS, STANLEY SIMON, CLAIRE SHULMAN, RALPH J. LAMBERTI, each individually and as Borough Presidents of the boroughs of the City of New York,

*Appellants,*

—and—

ROBERT A. STRANIERE, individually and as a member of the New York State Assembly,

*Intervenor-Appellant,*

—against—

BEVERLY MORRIS; JOY CLARKE HOLMES; JOANNE OPLUSTIL,

*Appellees.*

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FRANK V. PONTERIO,

*Intervenor-Appellant,*

—against—

BEVERLY MORRIS; JOY CLARKE HOLMES; JOANNE OPLUSTIL,

*Appellees.*

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ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT

## JOINT APPENDIX

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*Counsel of Record

**APPEAL DOCKETED DECEMBER 17, 1987**
**PROBABLE JURISDICTION NOTED APRIL 4, 1988**

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**United States Court of Appeals for the Second Circuit Docket Sheet**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

*Official Caption*[1]

Docket Nos. 86-9019, 86-9041, 86-9059

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BEVERLY MORRIS; JOY CLARKE HOLMES; JOANNE OPLUSTIL,

*Plaintiffs-Appellees,*

v.

THE BOARD OF ESTIMATE, THE CITY OF NEW YORK, EDWARD I. KOCH, individually and as City Council President, HARRISON J. GOLDIN, individually and as Comptroller for the City of New York, HOWARD GOLDEN, DAVID N. DINKINS, STANLEY SIMON, CLARE SHULMAN, RALPH J. LAMBERTI, each individually and as Borough Presidents of the boroughs of the City of New York,

*Defendants-Appellants,*

FRANK V. PONTERIO,

*Intervenor-Defendant-Appellant,*

ROBERT A. STRANIERE, individually and as a member of the New York State Assembly,

*Intervenor-Defendant-Appellant.*

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*Authorized Abbreviated Caption*[2]

Docket Nos. 86-9019, 86-9041, 86-9059

MORRIS V. BOARD OF ESTIMATE

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[1] Fed. R. App. 12(a) and 32(a).

[2] For use on correspondence and motions only.

*United States Court of Appeals for the Second Circuit Docket Sheet*

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*United States Court of Appeals for the Second Circuit Docket Sheet*

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*United States Court of Appeals for the Second Circuit Docket Sheet*

| DATE | FILINGS—PROCEEDINGS |
|---|---|
| 12- 3-86 | Copy of district court docket entries and notice of appeal on behalf of defendants-appellants THE BOARD OF ESTIMATE, THE CITY OF NEW YORK et al filed |
| 12- 3-86 | Copy of receipt: payment of docketing fee in district court filed 86-9019 |
| 12 -5-86 | Appellants BOARD OF ESTIMATE, CITY OF NY et al Form C filed (wy copy of lower decision) Appellants Form D filed |
| 12-10-86 | Copy of district court docket entries and notice of appeal on behalf of intervenor-defendant-appellant FRANK V. PONTERIO filed 86-9041 |
| 12-10-86 | Copy of receipt re: payment of docketing fee in district court filed |
| 12-15-86 | Appellant FRANK V. PONTERIO Form C filed Appellant Form D filed |
| 12-17-86 | Copy of district court docket entries and notice of appeal on behalf of intervenor-defendant appellant ROBERT A. STRANIERE filed 86-9059 |
| 12-17-86 | Copy of receipt re: payment of docketing fee in district court filed |
| 12-19-86 | Intervenor Appellant Straniere Form C filed Intervenor Appellant Form d filed |
| 12-19-86 | Scheduling Order #1 filed (86-9019, 8 -9041, 86-9059) |
| 12-31-86 | Record on appeal filed (original papers of district court) |



*United States Court of Appeals for the Second Circuit Docket Sheet*

| DATE | FILINGS—PROCEEDINGS |
|---|---|
| 12-31-86 | Appellants BOARD OF ESTIMATE, CITY OF NY, et al motion for extension of time to file appellant's briefs filed (w/pfs) (4cc) (orig to Staff counsel) |
| 1-12-87 | ORDER GRANTING appellants, BOARD OF ESTIMATE, ET AL motion for enlargement of time in which to file appellant's brief to the extent that the appellant's br and jt appdx shall be filed on 02-20-87; the appellee's br shall be filed on 03-23-87; and the apppeal shall be ready to be heard as early as the week of 04-06-87 FILED (scheduling order #2 endorsed on motion of 12-31-86). |
| 2-19-87 | Movant JOHN J. MARCHI consent to intervention as amicus curiae, filed. |
| 2-19-87 | Amicus curiae JOHN J. MARCHI brief, received. (awaiting filing of Appellants brief). |
| 2-20-87 | Movant STATEN ISLAND LEAGUE FOR BETTER GOVERNMENT consent to intervention as amicus curiae, filed. |
| 2-20-87 | Amicus curiae STATEN ISLAND LEAGUE FOR BETTER GOVERNMENT brief, received. (awaiting filing of Appellants' briefs). |
| 2-20-87 | Appellant PONTERIO brief, received. |
| 2-20-87 | Appellant BOARD OF ESTIMATE, ET AL. joint appendix received. |
| 2-23-87 | Appellant STRANIERE brief, filed. w/pfs. |
| 2-23-87 | Appellants THE BOARD OF ESTIMATE, ET AL. brief, filed. w/pfs. |

*United States Court of Appeals for the Second Circuit Docket Sheet*

| DATE | FILINGS—PROCEEDINGS |
|---|---|
| 2–23–87 | Appellants THE BOARD OF ESTIMATE, ET AL. joint appendix, filed. w/pfs. (3 vols.). |
| 2–23–87 | Appellant PONTERIO brief, filed. w/pfs. |
| 2–23–87 | Amicus Curiae STATEN ISLAND LEAGUE FOR BETTER GOVERNMENT brief, filed. w/pfs. |
| 2–23–87 | Amicus Curiae JOHN J. MARCHI brief, filed. w/pfs. |
| 3–12–87 | Appellee BEVERLY MORRIS, ET AL. motion for leave to file motion out-of-time and for leave to file an over-length brief without page-proofs, filed. w/pfs. |
| 3–16–87 | Movant JOHN F. BANZHAF III motion for leave to file motion out of time and to file brief amicus curiae FILED (w/pfs). |
| 3–16–87 | Movant JOHN F. BANZHAF III Motion for leave to file motion out of time and to file appendices to amicus curiae brief FILED (w/pfs). |
| 3–16–87 | Movant JOHN F. BANZHAF III motion for leave to file motion out of time and to participate in oral argument FILED (w/pfs). |
| 3–16–87 | Movant JOHN F. BANZHAF III—Amicus Curiae Brief RECEIVED (w/pfs). [10] |
| 3–16–87 | Movant JOHN F. BANZHAF III—Amicus Curiae appendix RECEIVED (w/pfs). [10] |
| 3–19–87 | Order granting appellee BEVERLY MORRIS, et al motion for filing an overlength brief, out of time without page proofs filed. |



*United States Court of Appeals for the Second Circuit Docket Sheet*

| DATE | FILINGS—PROCEEDINGS |
|---|---|
| 3–23–87 | Movant Peter F. Vallone et al motion for leave to file a brief of Amici Curiae and to argue orally. |
| 3–23–87 | Movant CITIZENS UNION motion for leave for Citizens Union as Amicus Curiae and to have five (5) minutes for oral argument filed (w/pfs) |
| 3–23–87 | Movant CITIZENS UNION motion for leave to file brief on behalf of amicus curiae, filed, w/pfs. |
| 3–23–87 | Appellees BEVERLY MORRIS, ET AL—Brief FILED (w/pfs). |
| 3–27–87 | Intervenor-defendant-appellant FRANK V. PONTERIO affidavit in opposition to movant Peter F. Vallone motion for leave to file a brief of amicus curiae and to argue orally filed (w/pfs) |
| 4– 8–87 | Appellant FRANK V PONTERIO reply brief, filed. w/pfs. |
| 4– 8–87 | Appellants THE BOARD OF ESTIMATE, ET AL. reply brief, filed. w/pfs. |
| 4– 8–87 | Movant JEROME X O'DONOVAN revocation of consent to be listed as one of the amicus curiae, as represented by Peter F. Vallone & Susan Belgard, filed. |
| 4–13–87 | Movant League of women Voters of the City of New York letter brief in support of position and argument set forth in the brief of movant/ amicus curiae Citizens Union of the City of New York filed. |

*United States Court of Appeals for the Second Circuit Docket Sheet*

| DATE | FILINGS—PROCEEDINGS |
|---|---|
| 4–23–87 | Order granted Professor John F. Banzhaf III motion to file brief as amicus and leave to file motion out of time filed (endorsed on motion filed 3/16/87) |
| 4–23–87 | Brief of Professor John F. Banzhaf III filed (w/pfs) |
| 4–23–87 | Order granted amicus Curiae Prof. Banzhaf motion for leave to file appendicies to amicus curiae brief and leave to file motion out of time filed (endorsed on motion filed 3/16/87) |
| 4–23–87 | Amicus Curiae appendicies by Prof. Banzhaf III filed (w/pfs) |
| 4–23–87 | Order denied amicus Prof. Banzhaf motion for leave to participate in oral argument and leave to file motion out of time filed (endorsed on motion filed 3/16/87) |
| 4–23–87 | Order granted Citizen's Union motion to file brief on behalf of amicus curiae filed (endorsed on motion filed 3/23/87) |
| 4–23–87 | Brief for Citizens Union as amicus curiae filed (w/pfs) |
| 4–23–87 | Order granted amicus curiae Vallone, et al leave to file brief; motion to participate in oral argument denied filed (endorsed on motion filed 3/23/87) |
| 4–23–87 | Brief for amicus curiae Peter F. Vallone, et al filed (w/pfs) |



*United States Court of Appeals for the Second Circuit Docket Sheet*

| DATE | FILINGS—PROCEEDINGS |
|---|---|
| 4–23–87 | Intervenor defendant appellant Straniere affidavit in opposition to motion to file brief & orally argue as amici curiae received (after motion was granted) |
| 4–29–87 | Appellant Robert A. Straniere statement pursuant to rule 28(i) to join the arguments submitted in the reply briefs of his co-appellants Filed (w/pfs nfs) [per JD] |
| 5 –4–87 | Case heard before Oakes, Newman, Pierce, C.JJ. |
| 5–11–87 | Clarifying letter (as per request of panel in open court), filed. (filed by Appellant City of New York). |
| 5–12–87 | Appellant Ponterio letter in response to clarifying letter (filed on 5-11-87), filed. |
| 5–12–87 | Appellant Ponterio clarifying letter (as per request of panel in open court, filed. |
| 5–12–87 | Amicus curiae John F. Banzhaf III response letter to clarifying letter of Appellant City of New York, filed. |
| 5–21–87 | Amicus Curiae Citizens Union response to clarifying letters, filed. |
| 10– 8–87 | Judgment affirmed, Published Signed Opinion filed (JLO)<br>Judge Newman concurred on separate opinion |
| 10– 8–87 | Judgment filed |
| 11– 4–87 | Mandate (judgment, opinion) issued to EDNY. |

*United States Court of Appeals for the Second Circuit Docket Sheet*

| DATE | FILINGS—PROCEEDINGS |
|---|---|
| 12–16–87 | Appellant Frank V Ponterio notice of appeal to the Supreme Court of the United States, filed. (per EBG). |
| 12–30–87 | Notice of filing of petition for writ of certiorari (filed 12/17/87) |
| 1–14–88 | Notice of Filing an Appeal on behalf of appellant Frank V. Ponterio on Dec. 31, 1987 supreme court #87-1112 Filed. |
| 4– 6–88 | Certified copy of order of Supreme Court noting probable jurisdiction on behalf of Appellant Bd of Estimate, et al. filed (SC# 87-1022) |
| 4– 6–88 | Certified copy of order of the Supreme Court noting probable jurisdiction on behalf of appellant Frank V. Ponterio (SC# 87-1112) |



**United States District Court Docket Sheet**

UNITED STATES DISTRICT COURT

CV 81-3920

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Beverly Morris; Joy Clarke Holmes; Joanne Oplustil,

*Plaintiffs,*

v.

The Board of Estimate, The City of New York, Edward I. Koch, individually and as Mayor of New York, Carol Bellamy, as City Council President, Harrison J. Goldin, individually and as Comptroller for the City of New York, Howard Golden, Andrew Stein, Stanley Simon, Donald Manes, Ralph Lamberti, each individually and as Borough Presidents of the boroughs of the City of New York,

*Defendants,*

—and—

Frank V. Ponterio,

*Intervenor-Defendant,*

Robert A. Straniere, individually and as a member of the New York State Assembly,

*Intervenor-Defendant.*

Challenge to Board of Estimate on One Person, One Vote Grounds Under Fourteenth Amendment
Actions Under Statutes: Civil Rights: Other Civil Rights

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*United States District Court Docket Sheet*

ATTORNEYS

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*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 12–02–81 | | Complaint for declaratory and injunctive relief, filed. Summons issued. vw(1) |
| 12–30–81 | | Summons returned and filed. Executed. gp (2) |
| 01–14–82 | | Defendants' ANSWER, filed. gp (3) |
| 01–14–82 | | By Neaher, J.—Stipulation and Order dated 01-82 that defts'. time to answer complaint extended to 01-11-82, filed. gp (4) |
| 2–25–82 | | BY NEAHER, J.—Initial conf order dtd 2-24-82 that status conf. has been set for 3-19-82 at 9:15 a.m. filed. CM. el (5) |
| 3–23–82 | | BY NEAHER, J.—Civil motion scheduling order filed. Pltffs shall file moving papers by 4-5-82; defts shall file opposing papers by 5-3-82; pltffs shall reply by 5-17 filed. CM. el (6) |
| 03–31–82 | | Applicant for Intervention's Notice of Motion returnable 04-15-82 at 10:00 a.m. for an order permitting intervention, etc., filed together with Affidavit of Frank V. Ponterio. gp (7) |
| 03–31–82 | | Applicant for Intervention's ANSWER, filed. gp (8) |
| 04–06–82 | | Kramarsky Affidavit and Exhibits A and B in support of Plaintiffs' motion for summary judgment, filed. gp (9) |

*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 04–06–82 | | Plaintiffs' Notice of Motion for summary judgment pursuant to F.R.C.P. 56 returnable 05-21-82 at 10:00 a.m., filed together with Statement of Facts pursuant to Local Rule 9(g). gp (10) |
| 04–06–82 | | Plaintiffs' Memorandum of Law in support of Motion for summary judgment, filed. gp (11) |
| 04–09–82 | | Professor Sanders' supplementary affidavit in support of pltffs' motion for summary judgment, filed. el (12) |
| 04–12–82 | | Affidavit of Judith A. Levitt in response to Motion to intervene, filed. gp (13) |
| 4–30–82 | | Intervenor-deft's notice of motion to strike pltff's affidavits and exhibits purs. to FRCP 56(e) filed. 1 el (14) |
| 4–30–82 | | Intervenor-deft's memo of law in opposition to pltffs' motion filed. (15) |
| 5– 5–82 | | Ltr. dtd 5-3-82 from Marilyn Glenn, Ctrm. Dep., to Richard Emery, Judith A. Levitt, Frederick A.O. Schwartz, Jr., and Frank V. Ponterio in re: oral argument adj'd from 5-21-82 to 6-11-82 at 10:30 a.m., filed. Copies mailed by ctrm. dep. ad (16) |
| 5–25–82 | | Notice of cross motion for summary judgment filed. el (17) |
| 5–25–82 | | Defts' counter statement of facts purs. to Rule 3 (g) filed. el (18) |



*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 5–25–82 | | Defts' memo of law in support of motion for summary judgment filed. el (19) |
| 6– 8–82 | | Pltffs' answers to defts' first set of interrogatories, filed. ad (20) |
| 6– 8–82 | | Pltffs' counsel's affirmation in opposition to intervenor's motion to strike pltff's affidavits, filed. ad (21) |
| 6– 8–82 | | Pltff's reply memorandum in support of their motion for summary judgment and in opposition to intervenor's motion to strike pltffs' affidavits, filed. ad (22) |
| 6 –8–82 | | Affidavit of Kathleen Durkin in re: service of Pltffs' memo in support of summary judgment and pltffs' counsel affirmation, filed. ad (23) |
| 6–11–82 | | Before NEAHER, J.—Case called. All parties present. Pltffs' motion for summary judgment argued. Decision reserved. ad (—) |
| 09–09–82 | | Stenographer's Transcript dated 06-11-82, filed. gp (24) |
| 12–02–82 | | Neaher, J. Memo/Order dtd 12-01-82 that the clerk of the Court is directed to enter judgment dismissing the complaint, etc. filed. (See order for details) c/m cm (25) |
| 12– 6–82 | | Judgment dtd 12-3-82 & filed. Ordered that the pltff take nothing of the defts & that summary judgment is entered in favor of |

*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| | | defts, dismissing the complaint, filed. c/m em (26) |
| 12–15–82 | | Affidavit of service of Kathleen Durkin, filed. em (27) |
| 12–15–82 | | Pltff's Notice of Motion returnable 12-17-82 @ 10:00 a.m. for reconsideration of the judgment, filed. Affirmation in support of pltff's motion attached. Exhibits annexed. em (28) |
| 12–17–82 | | Affidavit of Judith A. Levitt in opposition to motion for reconsideration, filed. gp (29) |
| 12–17–82 | | Affirmation of Frank V. Ponterio in opposition to plaintiffs' motion for reconsideration, filed. gp (30) |
| 12–30–82 | | By Neaher, J. Memo/Order dtd 12-29-82 denying pltffs' motion to reconsider its decision & judgment, etc., filed. (See order for details) c/m by D.C. em (31) |
| 01–04–83 | | * * * NOTICE OF APPEAL (pltffs-appellants) from judgment entered 12-06-82 & order entered 12-30-82, filed with receipt #45184 for C of A docketing fee. C of A notified. Affidavit of service attached. 32 |
| 2– 4–83 | | Entire record certified and mailed to C of A. el- |
| 02–23–83 | | Acknowledgment from C and A for receipt of record, filed. vw (33) |



*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 06–29–83 | | Certified copy of mandate from C of A dtd 05-16-83 that the decision of the district court is REVERSED N REMANDED, filed. Ack mailed to C of A. Chambers informed. C/A #83-7007 vw (34) |
| 7–13–83 | | By NEAHER, J.—CIVIL MOTION SCHEDULING ORDER dtd 7-6-83 that defts serve & file moving papers & supporting memo of law n/l/t 9-14-83; pltffs serve & file opposing papers n/l/t 10-5-83; defts serve & file reply n/l/t 10-19-83, filed. mw (35) |
| 7–22–83 | | By Neaher, J., Order dtd 6-29-83, granting the Citizens Union of the City of New York the right to participate in this case as amicus curiae, filed. So Ordered on letter dtd 6-28-83 from Alan Rothstein to Neaher, J. Exhibits attached. EC (36) |
| 7–22–83 | | Notice of Motion ret. 7-15-83 at 10:00 for an Order permitting said applicant to intervene as a defendant in this action pursuant to Rule 24(a) or (b) of FRCP, etc., filed. Affidavit of Robert A. Straniere attached. (Noted applicant Straniere) EC (37) |
| 9– 9–83 | | Letter dtd 9-7-83 to ERN from Judith A. Levitt requesting that the Court amend the current schedule to permit defts to file by 10-5-83 etc. filed. mg (38) |
| 9– 9–83 | | By NEAHER, J—Order dtd 9-8-83 amending current schedule as contained in document |

*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| | | #38. See endorsement on document #38. mg. — |
| 10– 5–83 | | By Neaher, J., Order dtd 10-4-83, extending briefing schedule for defts' papers from 10-5-83 to 10-19-83 and plaintiffs' reply papers to 11-2-83, filed. So Ordered on letter dtd 10-3-83 from Judith A. Levitt to Neaher, J. EC (39) |
| 10–12–82 | | Brief for intervenor-defendant Robert A. Straniere, filed. gp (40) |
| 10–17–83 | | By Neaher, J.—Order dated 10-12-83 that John Marchi is permitted to intervene in case, etc., filed. gp (41) |
| 10–17–83 | | Letter dated 10-12-83 to Judge Neaher from John J. Marchi in re: papers regarding motion to intervene etc., filed. gp (42) |
| 10–17–83 | | Applicant's Notice of Motion to intervene as amicus Curiae, filed. gp (43) |
| 10–17–83 | | Brief of Amicus Curiae, filed. gp (44) |
| 10–17–83 | | Copy of Brief for intervenor-Defendant Robert A. Straniere, filed. — gp (45) |
| 10–24–83 | | Letter dated 10-18-83 to Judge Neaher from Susan R. Rosenberg in re: requesting that the to intervene be enlarged to 10-26-83 filed. gp (46) |
| 10–24–83 | | By Neaher, J.—Order dated 10-18-83 that the request made on document number 46 |



*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| | | is so ordered filed on document number 46. gp (—) |
| 10–26–83 | | Intervenor-Defendant Frank V. Ponterio's Notice Of Motion ret. 11-30-83 at 10:00 AM, to deem issues resolved, filed. EC (47) |
| 10–26–83 | | Intervenor-Defendant Frank V. Ponterio's Memorandum Of Law In Support Of Motion To Deem Issues Resolved, filed. EC (48) |
| 10–26–83 | | Intervenor-Defendant Frank V. Ponterio's Affidavit in support of Motion To Deem Issues Resolved, filed. EC (49) |
| 10–26–83 | | Defendants' Memorandum Of Law, filed. EC (50) |
| 10–27–83 | | Defendants' Memorandum Of Law, filed. EC (51) |
| 11–14–83 | | By Neaher, J., Order dtd 11-9-83, rescheduling plaintiffs' answering papers for 14-4-83; also Intervenor Pontiero's motion noticed for 11-30-83 will be rescheduled. So Ordered on Letter dtd 11-7-83 from Richard Emery to Naeher, J. EC (52) |
| 11–29 | 53 | By Neaher, J., Order dtd 11-28-83, extending date for filing of Plaintiffs' Brief on Remand until 12-16-83. So Ordered on letter dtd 11-23-83 from Richard Emery to Neaher, J. EC |
| 12–20 | 54 | Memorandum of Law, filed. gp |

*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 12–20 | 55 | Affidavit of Service of Elva M. Woodard, filed. gp |
| 01–17 | 56 | Clerk's Calendar Notice dated 01-16-84 that action scheduled for pre-trial conference on 02-01-84 at 9:15 A.M., filed. gp |
| 2– 1 | 57 | Frank V. Ponterio's Statement pursuant to Local Rule 9(g). EC |
| 2– 1 | 58 | Frank V. Ponterio's Memorandum of Law In Opposition To Plaintiffs' Motion For Summary Judgment On Remand From The Second Circuit. EC |
| 2– 1 | 59 | Frank V. Ponterio's Affidavit In Opposition To Plaintiffs' Motion For Summary Judgment From The Second Circuit. EC |
| 2–22–84 | 60 | Letter dtd 2-8-84 to Judge Neaher from Richard Emery, re: requesting that we present you with these latest papers no later than 2-24-84. filed. (So Ordered by Judge Neaher), filed gb |
| 6– 7 | 61 | Plaintiff's Notice of Motion ret. 1-20-84 @ 10:00 AM, for an Order granting summary judgment. EC |
| 6– 7 | 62 | Plaintiff's Statement Of Facts Pursuant to Local Rule 3(g). EC |
| 6– 7 | 63 | Plaintiff's Joint Statement On Issues to Be Decided. EC |
| 6– 7 | 64 | Letter dtd 3-8-84 from Richard Emery to Neaher, J., noting a quick disposal of this |



*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| | | action may now be necessary to allow time for the appellate process to run its course, etc. EC |
| 6– 7 | 65 | Letter dtd 3-14-84 from Frank V. Ponterio to Neaher, J., requesting that a noted paragraph be deleted from the previously submitted "Joint Statement On The Issues To Be Decided." EC |
| 8–21 | 66 | By Neaher, J., Memo & Order dtd 8-21-84, that the Court holds that the Abate Test is applicable methodology and when applied reveals 132.9 percent deviation. The Court directs the parties to enter into a joint stipulation addressing possible justifications due 10-5-84. Parties informed. EC |
| 1984 | | |
| 0–03 | 67 | Letter dtd 9-28-84 from Susan R. Rosenberg to Judge Neaher in re: requesting extension of time until 10-19-84 to submit the joint stipulate requested by the court. filed ld |
| 0–19 | 68 | Joint Stipulation of Policies and interests served by the board of estimate. ld |
| 0–25 | 69 | Clerk's Calendar Notice dtd 10-23-84 that the above action has been set for Conference before Judge Neaher on 10-31-84 at 4:00 p.m. ld |
| 0–25 | 70 | Letter dtd 10-22-84 from Frank V. Ponterio pro se) to Judge Neaher in re: pur- |

*United States District Court Docket Sheet*

| | | |
|---|---|---|
| 1984 | | |
| | | suanting to 8-21-84 order submitted to Corporation Counsel for the City of New York letter dtd 9-24-84. I communicated by phone my concurrence with the proposed stipulation, requesting that it be permitted to submit to the already filed joint stipulation restoring the two deleted items and the original wording of the third item. ld |
| 0–30 | 71 | By Neaher, J—Order dtd 10-29 pursuanting to 8-21-84 order submitted to Corp. Counsel for the City of New York letter dtd 9-24-84 requesting that i be permitted to submit a supplement to the already filed joint stipulation, restoring the two deleted items and the original wording of the third item. (sign of on document #70) ld |
| 1–01 | 72 | Letter dtd 10-26-84 from Alan Rothstein to J. Neaher in re: regarding responds to the Joint Stipulation of Policies and interts Served by the Board of Estimate dated 10-18-84 (see letter for detail) ld |
| 0–31 | — | Before Neaher, J.—Case called. Counsel for all parties present. Conference held. Counsel to submit a proposed time schedule within ten days, to be So Ordered by the Court. rh<br>(Court Reporter Mike Picozzi) |
| 1–13 | 72 | Affidavit of Service for Elva M. Woodard. filed ld |



| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 1984 | | |
| 2–07 | 73 | By Neaher, J—Ltr dtd 12-4-85 from Frederic A. O. Schwartz to Judge Neaher in re: in regarded to the request for additional time. filed (signed off on letter) ld |
| 1985 | | |
| 1–10 | 73 | Ltr dtd 1-7-85 from David Jaffe to Bob re in: regarding status of the stipulation and asking that it be finalized as expeditiously as possible. filed ld |
| 1–17 | 74 | Copy of letter dated 1-14-85 from David Jaffe, to Hon. Frederick A.O. Schwarz, Jr. re revised Stipulation concerning above-captioned case which has been executed by the three Staten Island parties. filed rh |
| 1–31 | 75 | Plaintiffs' Supplemental Joint Stipulation Of Policies And Interests Served By The Board Of Estimate. EC |
| 2–13 | 76 | By Neaher, J., Stip & Order dtd 2-13-85, that at & time and placed and instead of a hearing the parties including amicus curiae will proceed by affidavits and memoranda of law on the policies and interests which may justify deviations from the one person, one vote formula; all parties agree that defts, intervenors, and amicus curiae shall be permitted to submit further papers within 30 days after this Court approves this stipulation and the parties receive actual notification of such approval. Parties informed. EC |

*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 1985 | | |
| 3– 8 | 77 | By Neaher, J., Stip & Order dtd 3-6-85, that the case caption is amended as follows (see face of docket for revisions). Parties informed. EC |
| 3–18 | 78 | Intervenor Robert A. Straniere's Affidavit submitted in accordance with the joint stipulation entered into by all parties in this action dtd 2-13-85. EC |
| 3–21 | 79 | John J. Marchi's Amicus Curiae Affidavit w/supporting affidavits. EC |
| 3–22 | 80 | Defts' Affirmation of Susan R. Rosenberg in further support of defts' position. EC |
| 3–28 | 81 | By Neaher, J., Order dtd 3-19-85, granting leave to defts to submit add'l papers to 3-22-85. So Ordered on letter dtd 3-14-85 from Michael C. Harwood. EC |
| 4–16 | 82 | Pltffs'. Affirmation and Exhibits in Support of Summary Judgment. Filed. jl |
| 4–19 | 83 | Affidavit of Alan Rothstein (submitted as per stipulation of parties and *amici*). EC |
| 4–25 | 84 | Reply Affidavit of John J. Marchi filed. EC |
| 5– 2 | 85 | Defts' Affirmation of Susan Rosenberg in reply to some of the points raised by both plaintiffs and defts amicus curiae. EC |
| 5– 6 | 86 | Affidavit of Service re John Marchi Affidavit. EC |



*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 1985 | | |
| 5– 6 | 87 | Intervenor-Deft Robert Straniere's Reply Affidavit in response to Affidavits filed on behalf of plaintiffs and Amicus Curiae Citizens Union. EC |
| 5– 6 | 88 | Reply Affirmation of Intervenor-Deft Frank V. Ponterio. EC |
| 5– 9 | 89 | By Neaher, J., Order dtd 5-5-85, that defts are given a one week extension of time to 5-3-85 to submit affidavits. So Ordered on letter dtd 4-24-85 from Robert A. Straniere. EC |
| 5– 9 | 90 | By Neaher, J., Order dtd 5-5-85, that Intervenor-deft Ponterio is given a one week extension of time to 5-3-85 to reply to pltff's papers. So Ordered on letter dtd 4-24-85 from Frank Ponterio. EC |
| 5–29 | 91 | Letter dtd 5-21-85 from Alan Rothstein to Neaher, J., in response to reply affidavit of Frank Ponterio. EC |
| 5–29 | 92 | Letter dtd 5-22-85 from John Banzhaf III to Neaher, J., re nature of brief amicus curiae and motion for leave to file same. att. EC |
| 5–29 | 93 | Supplemental Reply Affirmation Of Intervenor-Deft Ponterio. EC |
| 6– 3 | 94 | By Neaher, J., Letter dtd 5-17-85 from Richard Emery So Ordered as to modified |

*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 1985 | | |
| | | briefing Scheduled. (Order dtd 5-27-85) EC |
| 6- 3 | 95 | Motion of Professor John F. Banzhaf III For Leave To File Attached Brief Amicus Curiae. Att. EC |
| 6- 7 | 96 | Ltr dtd 5-31-85 from pltf atty to S.J. Neaher enclosing copy of memo from Prof. S. Brams in response to Prof. Banzhah's ltr to you, filed. gj |
| 6-10 | 97 | Pltff's counsel's affirmation in response to motion of professor John E. Banzhaf III. eop |
| 6-19 | 98 | Letter dtd 6-11-85 to Judge Neaher from Ms. Rosenberg, re: City defts. do not object to the participation of Professor John F. Banzhaf III as amicus curiae in this law suit. etc. filed gb |
| 6-13-85 | 99 | Affirmation of Intervenor-Defendant Ponterio in support of the motion of John F. Banzhaf III for leave to file A brief Amicus Curiae. Filed. (ent 6-21-85) cb |
| 7- 2-85 | 100 | By Neaher dated 6-17-85, on the letter from Mr. Emery to Judge, so ordered as to restriction on responses. tv |
| 7- 2-85 | 101 | Letter from Mr. Marchi to Judge dated 6-11-85 re materials used at seminar on governance of New York City. Further, |



*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 1985 | | |
| | | he has no objection to Prof. Banzhaf's mot. to participate as an Amicus Curiae. tv |
| 7- 2 | 102 | Letter from Robert Straniere to Judge dated 6-18-75 stating that he has no objection to Prof. Banzhaf participating as an Amicus Curiae in this case. tv |
| 7-27 | 103 | Steno's transcript dated 10-31-84 filed. (ent'd 2-27-86) vm |
| 7-24 | 104 | Ltr dtd. 7-22-86 addressed to EHN from Richard Emery in re: Urging that the Board of Estimate case find its way to the top of calendar list so that its status as an institution of City govt can finally be resolved. RHF |
| 11-19 | 105 | By Neaher—Opinion and Judgment dtd 11-19-86 granting pltffs' motion for summary judgment and declaring sections 61 and 62 of the New York City Charter violative of the equal protection clause of the fourteenth amendment to the U.S. Constitution. The City defts are enjoined to undertake curative measures with all deliberate speed, allowing for likely appeals. The Board shall continue to perform its duties under the present plan. Parties notified. ent 11-19 mg |
| 12- 1 | 106 | * * * Notice of Appeal (defts-appellants) from the judgment dtd 11-19-86 filed with |

*United States District Court Docket Sheet*

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 1985 | | |
| | | receipt #81647 for C of A dkt fee. Parties served by clerk. C of A notified. (ent'd 12-1-86) nl |
| 12- 9 | 107 | * * * NOTICE OF APPEAL (intervenor-deft Frank V. Ponterio-appellant) from the judgment dtd 11-19-86 filed with receipt #81815 for C of A dkt fee. Parties served by clerk. C of A notified. nl |
| 12–12 | 108 | * * * NOTICE OF APPEAL (Intervenor-deft Robert A. Straniere—appellant) from the judgment dtd 11-19-86 filed with receipt #81897 for C of A dkt fee. C of A notified. nl |
| 12–24 | 109 | Civil appeal scheduling order dtd 12-19-86 from C of A that the record on appeal be filed by 1-8-87, that the appellants brief & joint appendix be filed by 1-20-87, that the brief of the appellee be filed by 2-10-87 & that the argument of the appeal be heard by week of 3-2-87 filed. C of A #86-9019 & 86-9041. nl |



**Complaint for Declaratory and Injunctive Relief, dated December 2, 1981**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

---

BEVERLY MORRIS; JOY CLARKE HOLMES; JOANNE OPLUSTIL,

*Plaintiffs,*

—against—

THE BOARD OF ESTIMATE, THE CITY OF NEW YORK, EDWARD I. KOCH, individually and as Mayor of New York, CAROL BELLAMY, individually and as City Council President, HARRISON J. GOLDIN, individually and as Comptroller for the City of New York, HOWARD GOLDEN, ANDREW STEIN, STANLEY SIMON, DONALD MANES, ANTHONY GAETA, each individually and as Borough Presidents of the boroughs of the City of New York,

*Defendants.*

---

*Introductory Statement*

1. In this action plaintiffs, MORRIS, HOLMES, and OPLUSTIL, three registered voters residing in Brooklyn, challenge sections 61 and 62 of the New York City Charter which result in underrepresentation on the Board of Estimate for the residents of Brooklyn. Sections 61 and 62 of the City Charter, which prescribe the membership and voting structure of the Board of Estimate, therefore, violate equal protection of the law as required by one person, one vote constitutional principles. Plaintiffs seek declaratory and injunctive relief to remedy the dispropor-

tionate representation of other boroughs of the City of New York as compared to Brooklyn in so far as each of the other boroughs has a smaller population than Brooklyn, but a relatively greater share of representation on the Board of Estimate.

*Jurisdiction*

2. This action is grounded upon the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983 and 1985. Relief is sought pursuant to 28 U.S.C. §2201, and 2202. Jurisdiction is based upon 28 U.S.C. §1331, 1343 and 2201.

*Plaintiffs*

3. Plaintiffs Morris, Holmes and Oplustil are each citizens of the United States, State of New York and City of New York. Each plaintiff is a registered voter in Kings County.

4. Defendant Board of Estimate is a body of New York City municipal government authorized by Chapter 3 of the New York City Charter. Defendant Board of Estimate is comprised of the Mayor, City Council President, Comptroller and the five borough Presidents of the City of New York. Its functions and operation are more fully described in paragraphs 8 through 9, below, in the portion of this complaint entitled "Factual Allegations."

5. Defendant City of New York is the local municipal entity which is governed, in part, by the defendant Board of Estimate.



6. Defendants Edward I. Koch, Carol Bellamy, Harrison J. Goldin, are Mayor, City Council President and Comptroller of the City of New York, respectively. These defendants hold citywide offices and each of these defendants was elected to his/her office in the last citywide election. Under the New York City Charter each of these office holders is entitled to two votes out of the total of eleven votes allocated to the membership of the Board of Estimate.

7. Defendants Howard Golden, Borough President of Kings County; Andrew Stein, Borough President of New York County; Stanley Simon, Borough President of Bronx County; Donald Manes, Borough President of Queens County; and Anthony Gaeta, Borough President of Richmond County, are the five borough presidents of the boroughs of the City of New York. Each of these defendants was elected by voters in each of their respective boroughs in the last countywide elections. Under the New York City Charter, each of the borough presidents is entitled to one vote out of the total of eleven votes which is allocated to the members of the Board of Estimate.

*Factual Allegations*

8. Defendant Board of Estimate of the defendant City of New York is a legislative body which is authorized by the New York City Charter to exercise certain general governmental powers which include but are not limited to the following:

A. The Board of Estimate exclusively

i. determines the use, development and improvement of property owned by the City;

ii. approves standards, scopes and final designs of capitol projects for the City;

iii. negotiates and enters into all contracts on behalf of the City;

iv. negotiates and approves all franchises that are granted by the City;

v. grants leases of City property and enters into leases of property for City use;

vi. sets the rates for purchases of water from the City;

vii. sets the charges for sewer services provided by City; and

viii. approves or modifies all zoning decisions for the City.

B. The Board of Estimate acting in the nature of one house of a bicameral legislature

i. recommends and approves the expense budget of the City;

ii. recommends and approves the capital budget of the City;

iii. periodically modifies the budgets of the City;

iv. confers with the City Council when agreement on the budget between the two bodies is not reached;

vi. overrides mayoral votes of budget items; and

vi. holds hearings on budgetary matters.



C. The Board of Estimate also

1. administers the Bureau of Franchises

ii. administers the Bureau of the Secretary;

iii. holds public hearings on any matter of City policy within its responsibilities whenever called upon to do so by the Mayor or in its discretion for the public interest;

iv. holds hearings on tax abatements that are within the discretion of City administrative agencies; and

vi. makes recommendations to the Mayor or City Council in regard to any matter of City policy.

9. The defendant Board of Estimate is comprised of the three defendant citywide officials whom the City Charter grants two votes each, and the five defendant borough presidents who are granted one vote each.

10. The population of the defendant City of New York is 7,071,030.

11. The population of each borough of the defendant City of New York is as follows:

| | |
|---|---|
| Brooklyn | 2,230,936 |
| Queens | 1,891,325 |
| Manhattan | 1,427,533 |
| Bronx | 1,169,115 |
| Staten Island | 352,121 |

12. Allocating the votes of the defendant members of the defendant Board of Estimate according to the propor-

tion of citywide population that each borough contains produces the following results:

| | *Citywide Votes* | *Boroughwide Votes* | *Proportional Votes Total* |
|---|---|---|---|
| Brooklyn | 1.89 | 1.58 | 3.47 |
| Queens | 1.60 | 1.34 | 2.94 |
| Manhattan | 1.21 | 1.01 | 2.22 |
| Bronx | .99 | .83 | 1.82 |
| Staten Island | .30 | .25 | .55 |

13. Under the present system mandated by sections 61 and 62 of the Charter of the City of New York, the votes of the defendant Board of Estimate are allocated by borough as follows:

| | *Citywide Votes* | *Borough Votes* | *Total* |
|---|---|---|---|
| Brooklyn | 1.89 | 1 | 2.89 |
| Queens | 1.60 | 1 | 2.60 |
| Manhattan | 1.21 | 1 | 2.21 |
| Bronx | .99 | 1 | 1.99 |
| Staten Island | .30 | 1 | 1.30 |

14. The percentage of deviation from fair and equal representation by borough on the defendant Board of Estimate is as follows:

| | *Percentage of deviation from ideal voting representation* |
|---|---|
| Brooklyn | — 16.7% |
| Queens | — 11.6% |
| Manhattan | — .5% |
| Bronx | + 9.3% |
| Staten Island | +136.4% |



15. The total extreme of deviation from the representation on the defendant Board of Estimate which would be exactly proportional to the population distributed among the five boroughs is ±153.1%.

16. Under the present system of representation mandated by sections 61, 62, 120 and 222 of the New York City Charter for the defendant Board of Estimate representation of 41.7% of the population of the City of New York can control a majority of votes on every budget measure.

17. Budget measures are the primary legislative function of the defendant Board of Estimate.

18. Upon information and belief, there are several available alternative methods of preserving borough representation on the defendant Board of Estimate without denying to plaintiffs their equal share of representation on the defendant Board of Estimate.

19. Upon information and belief there is no adequate relief available other than the issuance of an injunction to prevent the continuing harm imposed upon plaintiffs by the existence of the present system of voting of the defendant Board of Estimate.

*Cause of Action*

20. Based upon paragraphs 1 through 19 herein, defendants are violating plaintiffs' right to equal protection of the law as required by one person, one vote principles.

*Complaint for Declaratory and Injunctive Relief*

WHEREFORE, plaintiffs respectfully pray that this Court issue the following relief:

1. Enjoin defendants, requiring the defendants to take the necessary measures to alter either the membership or the voting structure of the defendant Board of Estimate in order to eliminate the disproportionate representation imposed upon the plaintiffs;

2. Declare sections 61 and 62 of the New York City Charter unconstitutional as violative of one person, one vote principles;

3. Award attorneys fees and costs to plaintiff; and

4. Award all such other relief as may be just and proper in this case.

Dated: December 2, 1981

/s/ RICHARD EMERY
Richard Emery
Arthur Eisenberg
New York Civil Liberties Union
84 Fifth Avenue
New York, New York 10011
(212) 924-7800

*Attorneys for Plaintiffs*



**Defendants' Answer dated January 11, 1982**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

81 Civ. 3920 (ERN)

---

BEVERLY MORRIS; JOY CLARKE HOLMES; JOANNE OPLUSTIL,

*Plaintiffs,*

—against—

THE BOARD OF ESTIMATE, THE CITY OF NEW YORK, EDWARD I. KOCH, individually and as Mayor of New York, CAROL BELLAMY, individually and as City Council President, HARRISON J. GOLDIN, individually and as Comptroller for the City of New York; HOWARD GOLDEN, ANDREW STEIN, STANLEY SIMON, DONALD MANES, ANTHONY GAETA, each individually and as Borough Presidents of the boroughs of the City of New York,

*Defendants.*

---

Defendants, by their attorney FREDERICK A. O. SCHWARZ, JR., Corporation Counsel of the City of New York, as and for their answer to the complaint, respectfully allege as follows:

1. Deny each and every allegation contained in paragraph "1" thereof, except admit that plaintiffs purport to challenge sections 61 and 62 of the New York City Charter and seek declaratory and injunctive relief.

2. Deny each and every allegation contained in paragraph "2" thereof, except admit that plaintiffs purport to

predicate this action, the request for relief, and jurisdiction, upon the provisions and statutes set forth therein.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" thereof.

4. Deny each and every allegation contained in paragraph "4" thereof, except admit that the Board of Estimate is comprised of the Mayor, City Council President, Comptroller and the five borough Presidents of the City of New York, and respectfully refer the Court to Chapter 3 of the New York City Charter.

5. Deny each and every allegation contained in paragraph "5" thereof.

6. Admit the truth of the allegations contained in paragraph "6" thereof.

7. Admit the truth of the allegations contained in paragraph "7" thereof.

8. Deny each and every allegation contained in paragraph "8" thereof and respectfully refer the Court to New York City Charter § 67 for a statement of the responsibilities of the New York City Board of Estimate.

9. Admit the truth of the allegations contained in paragraph "9" thereof.

10. Admit the truth of the allegations contained in paragraph "10" thereof.



11. Admit the truth of the allegations contained in paragraph "11" thereof.

12. Deny each and every allegation contained in paragraph "12" thereof.

13. Deny each and every allegation contained in paragraph "13" thereof.

14. Deny each and every allegation contained in paragraph "14" thereof.

15. Deny each and every allegation contained in paragraph "15" thereof.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "16" thereof.

17. Deny each and every allegation contained in paragraph "17" thereof.

18. Deny each and every allegation contained in paragraph "18" thereof.

19. Deny each and every allegation contained in paragraph "19" thereof.

20. Deny each and every allegation contained in paragraph "20" thereof.

*As And For a First Defense,*
*Defendants Respectfully Allege:*

21. The complaint fails to state a claim upon which relief can be granted.

*Defendants' Answer dated January 11, 1982*

*As And For a Second Defense,*
*Defendants Respectfully Allege:*

22. The one person, one vote principle does not apply to the New York City Board of Estimate.

23. The New York City Board of Estimate is neither the legislative nor general governing body of the City nor is it vested with general governmental powers.

*As And For a Third Defense,*
*Defendants Respectfully Allege:*

24. Even if the one person, one vote principle applied to the New York City Board of Estimate, defendants are not in violation of its requirements.

*As And For a Fourth Defense,*
*Defendants Respectfully Allege:*

25. The complaint fails to state a claim against defendants in their individual capacities.

*As And For a Fifth Defense,*
*Defendants Respectfully Allege:*

26. The complaint is barred by the doctrines of res judicata and collateral estoppel and the principles of stare decisis.

WHEREFORE, defendants respectfully request that the complaint be dismissed, together with such other and further relief as to the Court seems just and proper.



*Defendants' Answer dated January 11, 1982*

Dated: New York, New York
January 11, 1981.

FREDERICK A. O. SCHWARZ, JR.
Corporation Counsel of
the City of New York
100 Church Street, Rm. 6C12
New York, New York 10007
(212) 566-2091
By: /s/ JUDITH A. LEVITT
Judith A. Levitt
Assistant Corporation Counsel

**Plaintiffs' Notice of Motion for Summary Judgment Pursuant to F.R.C.P. 56, dated April 5, 1982, filed with Statement of Facts Pursuant to Local Rule 9(g)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
81-CV-3920 (E.R.N.)

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MORRIS et al.,

*Plaintiffs,*

—against—

THE BOARD OF ESTIMATE et al.,

*Defendants.*

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Please take notice that based upon the affidavits and exhibits in support of plaintiffs' motion for summary judgment and based upon the memorandum in support of plaintiffs' motion for summary judgment, plaintiffs' will move for summary judgment pursuant to F.R.C.P. 56 in the courtroom of the Honorable Edward J. Neaher, United States District Judge, at 225 Cadman Plaza East, Brooklyn, New York, on May 21, 1982 at 10:00 A.M. or as soon thereafter as plaintiffs may be heard.

Dated: April 5, 1982

Respectfully submitted,

/s/ RICHARD EMERY
Richard Emery
Arthur Eisenberg
*Attorneys for Plaintiffs*
New York Civil Liberties Union
84 Fifth Avenue
New York, N.Y. 10011
212-924-7800



**Statement of Facts Pursuant to Local Rule 9(g)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
81-CV-3920 (E.R.N.)

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MORRIS et al.,

*Plaintiffs,*

—against—

THE BOARD OF ESTIMATE et al.,

*Defendants.*

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The following is a statement of the facts which plaintiffs believe to be undisputed, which entitle plaintiffs to summary judgment:

1. Plaintiffs are residents and registered voters in Brooklyn, New York.

2. The Board of Estimate is a body of New York City municipal government authorized by Chapter 3 of the New York City Charter. The Board of Estimate is comprised of the Mayor, City Council President, Comptroller and the five borough Presidents of the City of New York.

3. The City of New York is the local municipal entity which is governed, in part, by the defendant Board of Estimate.

4. Edward I. Koch, Carol Bellamy, Harrison J. Goldin, are Mayor, City Council President and Comptroller of the City of New York, respectively. These elected officials hold

citywide offices and each of these officials was elected to his/her office in the last citywide election. Under the New York City Charter each of these office holders is entitled to two votes out of the total of eleven votes allocated to the membership of the Board of Estimate.

5. Howard Golden, Borough President of Kings County; Andrew Stein, Borough President of New York County; Stanley Simon, Borough President of Bronx County; Donald Manes, Borough President of Queens County; and Anthony Gaeta, Borough President of Richmond County, are the five borough presidents of the boroughs of the City of New York. Each of these officials was elected by voters in each of their respective boroughs in the last countywide elections. Under the New York City Charter, each of the borough presidents is entitled to one vote out of the total of eleven votes which is allocated to the members of the Board of Estimate.

6. The Board of Estimate is comprised of the three defendant citywide officials whom the City Charter grants two votes each, and the five defendant borough presidents who are granted one vote each.

7. The Board of Estimate of the City of New York is a governmental body which is authorized by the New York City Charter, to exercise certain governmental powers which include but are not limited to the following:

A. The Board of Estimate exclusively

i. determines the use, development and improvement of property owned by the City;

ii. approves standards, scopes and final designs of capitol projects for the City;



iii. negotiates and enters into all contracts on behalf of the City;

iv. negotiates and approves all franchises that are granted by the City;

v. grants leases of City property and enters into leases of property for City use;

vi. sets the rates for purchases of water from the City;

vii. sets the charges for sewer services provided by the City; and

viii. approves or modifies all zoning decisions for the City;

ix. sets tax abatements.

B. The Board of Estimate acting in conjunction with the New York City Council

i. recommends and approves the expense budget of the City without the participation of the Mayor;

ii. recommends and approves the capital budget of the City without the participation of the Mayor;

iii. periodically modifies the budgets of the City;

iv. confers with the City Council when agreement on the budget between the two bodies is not reached;

v. overrides mayoral vetoes of budget items without the participation of the Mayor; and

vi. holds hearings on budgetary matters.

*Statement of Facts Pursuant to Local Rule 9(g)*

C. The Board of Estimate also

i. administers the Bureau of Franchises

ii. administers the Bureau of the Secretary;

iii. holds public hearings on any matter of City policy within its responsibilities whenever called upon to do so by the Mayor or in its discretion for the public interest;

iv. holds hearings on tax abatements that are within the discretion of City administrative agencies; and

v. makes recommendations to the Mayor or City Council in regard to any matter of City policy.*

8. The Board of Estimate is the only municipal body in New York City government which requires New York City's Mayor, Comptroller, City Council President and Borough Presidents to meet regularly and vote together upon issues which concern the governing of New York City.

9. The Board of Estimate's activities are the very same activities traditionally undertaken by municipal legislative bodies and municipal executives in other American cities and constitute general governmental powers.

10. The Board of Estimate's activities affect the geographic area coextensive with New York City.

11. The population of the City of New York is 7,071,030.

* For a complete list of the Board of Estimate's powers with references to Charter and Administrative Code provisions, see Appendix A to Exhibit A (the Kramarsky Study) which is hereby incorporated herein by reference.



*Statement of Facts Pursuant to Local Rule 9(g)*

12. The population of each borough of the City of New York is as follows:

| | |
|---|---|
| Brooklyn | 2,230,936 |
| Queens | 1,891,325 |
| Manhattan | 1,427,533 |
| Bronx | 1,169,115 |
| Staten Island | 352,121 |

13. The deviations from the norm population per vote inherent in the present representation scheme on the Board of Estimate are as follows:

| | |
|---|---|
| Brooklyn | —20.1% |
| Queens | —13.2% |
| Manhattan | — .5% |
| Bronx | + 8.6% |
| Staten Island | +57.9% |

14. The extreme deviation from a norm deviation per vote on the Board of Estimate is plus or minus 78%.

15. Under the present system of representation mandated by sections 61, 62, 120 and 222 of the New York City Charter for the Board of Estimate representation of 41.7% of the population of the City of New York can control a majority of votes on every budget measure.

Dated: April 5, 1982

Respectfully submitted,

/s/ Richard Emery
Richard Emery
Arthur Eisenberg
*Attorneys for Plaintiffs*
New York Civil Liberties Union
84 Fifth Avenue
New York, N.Y. 10011

**Affidavit of Werner Kramarsky, Read in Support of Plaintffs' Motion for Summary Judgment, dated March 29, 1982 with Annexed Exhibit**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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BEVERLY MORRIS, et al.,

*Plaintiffs,*

—v—

THE BOARD OF ESTIMATE OF THE CITY OF NEW YORK,

*Defendants.*

---

Werner Kramarsky, being duly sworn, deposes and says:

1. I am the New York State Commissioner for Human Rights. I have served in this capacity for the past seven years.

2. From 1967 to 1970 I served as Mayor John Lindsay's representative on the New York City Board of Estimate. During that period I attended approximately one hundred (100) bi-monthly Board of Estimate public meetings. I also attended Board executive sessions and participated in all aspects of the Board's decision-making process. I helped develop and implement streamlined Board decision-making procedures. Through my personal experience I became intimately familiar with the operation of the Board of Estimate and with its role in city government at that time.

3. After leaving government service in 1970, I established a consulting firm that provided advice and assis-





tance to organizations doing business with State and municipal governments. In 1973, under a contract from the N.Y. State Charter Revision Commission for New York City, I prepared a report entitled, "The Structure, Powers, and Functions of New York City's Board of Estimate," a copy of which is attached hereto as exhibit A. This report examined the role of the Board of Estimate in New York City government, first by tracing the Board's historical origins and development; second, by describing the Board's functions under the existing charter; and third, by presenting an empirical analysis of the Board policy-making process. In preparing the report, I made extensive use of primary and secondary sources regarding the Board of Estimate.

4. The Board of Estimate exercises extensive general governmental powers essential to the operation of municipal government. It is the body which is primarily responsible for allocating the resources of the New York City government among its citizens. Under the City Charter, the Board exercises exclusive authority over the acquisition, use, development and improvement of city property, the establishment of municipal contracts; the granting of municipal franchises; the setting of municipal water and sewer rates; and the enactment of municipal zoning regulations. In conjunction with the City Council, the Board of Estimate recommends and approves the municipal capital and expense budget.

5. Its exclusive control over municipal property and contracting, and its budgetary powers, ensure that the Board of Estimate exercises primary control over decisions con-

cerning a variety of basic essential city services. Board of Estimate decisions affect the size and composition of the Police and Fire Departments, the number and location of police and fire stations, the number and locations of municipal hospitals, the location of parks, public housing projects, and publicly assisted housing and priorities for the maintenance and alteration of the municipal infrastructure, including buildings, streets, sewers, tunnels, bridges and wharves.

6. The Board of Estimate's budgeting and contracting powers affect the functioning of municipal government in two even more fundamental respects. First, the Board's budgeting and contracting authority effectively provide it with oversight responsibilities for municipal agencies which are frequently involved in items appearing on the calendar for Board consideration and resolution. Agency officials, therefore, must frequently appear before the Board to explain agency decisions, recommendations, actions, or positions.

7. A second, related, and perhaps even more important way in which the Board of Estimate affects municipal governance is its function in resolving disputes between municipal agencies, municipal agencies and private businesses, and between private interest groups, concerning matters over which the Board has ultimate authority. If, for example, the Departments of Parks and Highways are in conflict over their projected uses of municipal land, the Board of Estimate, which has ultimate authority over city land use planning, will resolve the dispute. Similarly, disputes over city land in which private groups have a stake



are resolved by the Board of Estimate. In this way, the Board of Estimate allocates the City's physical assets and balances competing interests of municipal agencies and concerned private constituencies.

8. The Board of Estimate's decisions also significantly effect the allocation not only of the city's public assets, but also of its private assets. The Board of Estimate's decisions concerning tax abatements, zoning, the development of public land, the granting of franchises, the letting of contracts, and others of its exclusive powers have major economic implications for private property owners in this city. Board of Estimate decisions create powerful incentives affecting municipal industrial and commercial development both in the city as a whole and in specific areas of the city. Thus, Board of Estimate decisions directly shape the growth of both the public and private sectors of New York and effectively serve to allocate public and private municipal resources.

9. The Board of Estimate also plays a significant role in determining municipal tax rates. While the Board no longer possesses the power to establish the tax rate, its role in developing the municipal budget and its exclusive powers to determine municipal income accruing from leases and sales of city property, sewer and water rates, and tax abatements, effectively determines how much revenue must be raised through taxation.

10. Of the elected officials who serve on the Board of Estimate, the borough presidents are the least powerful, both in their role as city officials and as a result of the

single vote granted to each in his capacity as a member of the Board of Estimate. Nevertheless, the respective borough presidents are influential to a great degree over matters concerning their boroughs and over city-wide policy as well, especially when a divergence of interests splits the majority votes held by the city-wide office holders. Furthermore, the regular bi-monthly meetings and the consequent compromise process which is the essence of the regular operation of the Board of Estimate serves to enhance the influence and power of the borough presidents in relation to city-wide as well as borough issues. The position that a borough president holds on the Board of Estimate is surely the role in which he has the opportunity to exercise the most power of any granted to his office by the City Charter. It is the single most important institutional method available to him to affect borough and city-wide governmental functions.

11. The Board of Estimate is thus unique among New York City governmental entities in that it exercises considerably more power, in fact, than it is granted formally under the City Charter. By providing a forum in which the most powerful elected officials representing different parts of the city can meet and represent the interests of their particular constituent groups, as well as the City as a whole, the Board of Estimate functions as the central institution for affecting change in New York City. Its powers are so pervasive that it is safe to say that there is virtually no aspect of city life regulated by city government over which the Board of Estimate does not have considerable control. Because it brings together for institutional purposes the most powerful elected officials in the



city, it has evolved into the city's most powerful governmental institution, functionally exercising as an institution, authority over city government far beyond those specifically enumerated in the City Charter.

/s/ Werner Kramarsky
Werner Kramarsky

Sworn to before me this
29th day of March, 1982.

/s/ Martin Silberman
Notary Public

Martin Silberman
Notary Public, State of New York
No. 24-4706592
Qualified in Kings County
Commission Expires March 30, 1983.

**Exhibit (A): Annexed to the Affidavit of Werner Kramarsky submitted to the United States District Court, Eastern District of New York**

**"The Kramarsky Study" of the Board of Estimate**

# THE STRUCTURE

# POWERS AND FUNCTIONS

# OF

# NEW YORK CITY'S

# BOARD OF ESTIMATE



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

September 14, 1973

Honorable Roy Goodman
Chairman
State Charter Revision Commission
for New York City
270 Broadway
New York, New York 10007

Dear Mr. Chairman:

We are pleased to transmit herewith the report on the Board of Estimate which was commissioned by the State Charter Revision Commission for New York City. In preparing this report, we have drawn extensively upon testimony presented to the Commission, previous Charter revision working papers, Interviews with commissioners and personnel of agencies who deal regularly with the Board, and interviews with the Board's staff and participants in Board proceedings.

The Board of Estimate, we found, is an institution indigenous to the City of New York. It was created, even before the consolidation of 1898, to fulfill the specific, concrete needs of a growing metropolis as governmental problems penetrated the boundaries of its smaller constituent political subdivisions.

We hope that you find the report interesting and useful. We have enjoyed working on it with you and your staff over the past few months.

If we can be of any further assistance, please do not hesitate to call.

Yours very truly,

/s/ Werner H. Kramarsky
Werner H. Kramarsky

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

# *The Structure, Powers, and Functions of New York City's Board of Estimate*

Prepared by W.H.K. Communications Associates, Inc.

For the State Charter Revision Commission
For New York City.

August, 1973

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Dedicated to the Memory of
John J. Carty
(1908-1970)

Teacher
Civil Service Commission Examiner
Budget Examiner
Junior Budget Examiner
Senior Budget Examiner
Chief Budget Examiner
Assistant Budget Director
First Deputy Comptroller



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*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

## Board of Estimate History

For New York City, the ultimate seat of governmental authority has always resided in the State Legislature in Albany. Power over local problems, such as city finances and control of city property, has only gradually devolved upon the city, and all such powers are exercised in the shadow of their possible modification or removal by the State.

Supervision over city property in the 17th and 18th centuries was held by the Common Council, an analogue to the present City Council, and after 1802 by the Comptroller. The Common Council also ruled on the city budget, and the Board of Aldermen (one-half of the Common Council) held the power to grant franchises until 1905. Public improvements could be undertaken only after study and approval by a State Commission, and were financed by local assessments.

In 1864, the Board of Estimate and Apportionment was created for the purpose of estimating the expense of conducting the Metropolitan Police District, which supervised the police in all the boroughs. This first step towards centralization was a necessary response to the fact that effective law enforcement required a police force whose jurisdiction was not limited to small localities. The Board of Estimate's creation was an organic response to the necessity of administering a governmental agency which encompassed several autonomous constituencies. The new Board was composed of the Commissioners of the Metropolitan Police (appointed by the Governor), and the Comptrollers of New York City and Brooklyn (who were chosen by the Common Councils of their respective cities.) The new Board was the first institutionalization of interborough co-

operation. The Metropolitan Police District was abolished in 1870, but the precedent was established for making the Board the caretaker of city-wide interests.

In 1873 a new New York City Charter provided for a Board of Estimate and Apportionment to manage the city's budget. It consisted of the Comptroller, the President of the Board of Aldermen, (both appointed by the Common Council), the Mayor, and the President of the Department of Taxes and Assessments. Beginning in 1884, the Comptroller and President of the Board of Aldermen were popularly elected. The addition of the Corporation Counsel in 1893 gave three of the five Board votes to the Mayor and his appointees.

The growth of the Board's power furthered the centralization of government within New York City, and, as the outer boroughs entered its sphere, strengthened the position of the city vis-a-vis New York State. The Board's smaller size and city-wide character enabled it to transact city business more smoothly on the Board of Aldermen and more effectively than the distant legislature in Albany.

After the consolidation of 1898, the Board continued its function of estimating the expense of conducting the city government, establishing a tax based on the estimate, transferring funds from one department to another, issuing stocks and bonds.[1] The issuing of stocks or bonds by one of the city boards (i.e. the Bureau of Rapid Transit) to underwrite capital construction costs could only take place with the approval of a majority of the Board acting upon a request by the Board of Aldermen.[2]

A significant change was that while under the pre-consolidation system the Board of Estimate submitted the budget to the Board of Aldermen which made changes subject to final Board of Estimate approval, the 1898 con-



solidation Charter adopted the Brooklyn system under which the new bicameral Municipal Assembly had final say on the budget. The Municipal Assembly, while not empowered to add to the budget, could cut down on any item without further review by the Board. The Municipal Assembly consisted of the Board of Aldermen (the 60 member lower house) and the City Council (the 29 member upper house.)

On the executive level of city government there also existed a Board of Public Improvements. This Board consisted of the Mayor, the Comptroller, and the heads of all city departments. Borough Presidents were also entitled to sit on the Board, but only allowed to vote on matters concerning their own boroughs. The Board of Public Improvements' basic function, in effect, was to regulate the city's capital expenditures. Both the Board of Estimate and the Board of Public Improvements served as a check on the possible extravagances of the Municipal Assembly in the area of capital expenditures.[3] The Board of Public Improvements was also controlled by the Mayor's office. This Board of Public Improvements was quite similar in composition and function to the present Site Selection Board.

The Comptroller's function under the new Charter continued to be that of the city's chief financial officer. He had the power of investigation and with it the right to subpoena. The power to audit all vouchers, official accounts, incoming revenues, and to prescribe methods for the accounting, recording and reporting of all financial transactions were also part of the Comptroller's duties. In addition, the Comptroller had the power to settle and adjust all claims either for or against the city. All city monies, their receipt and expenditure, in whatever way, to or from

whatever source, were to be included in the Comptroller's year-end report. The Comptroller's superior ability to gather information about the city's finances put him in a pivotal position on the Board of Estimate, especially when there were conflicts within the Board or between different branches of government.

The Manhattan wing of the Democratic Party exercised considerable influence on the government of the newly consolidated City of New York. The hegemony of the Manhattan wing was demonstrated in 1898 with the consolidated city's first mayoral election. The Manhattan organization's candidate won easily in a four-man race against an insurgent, a fusion Democratic candidate, and the Republican Party's candidate. In 1901, after three years of Manhattan domination, a coalition of Republicans and insurgents, spearheaded by the Brooklyn wing of the Democratic Party, which was disgruntled by its exclusion from the Manhattan dominated government, united to push through a series of amendments to the 1898 Charter.

The New York (State) Charter Revision Commission wrote in 1900:

> The Board of Estimate and Apportionment under our draft Charter will be the most important body in the city government. Whatever dissatisfaction may have been felt with any other municipal body, the Board of Estimate and Apportionment has generally given satisfaction for its capacity, efficiency and integrity. Under the plan of the Commission it will be in reality the center of all legislative activity in relation to financial affairs, and much of the administrative activity of the City. It will be in effect an upper house of the City Legislature and also a cabinet of the most important administrative officers.[4]



The Board of Estimate was reconstituted into its present form combining the functions of the old Board with that of the Board of Public Improvements. The new Board of Estimate consisted of the Mayor, the Comptroller, the President of the Board of Aldermen, and the Borough Presidents, with weighted votes distributed as follows: Mayor —3 Comptroller—3; President of the Board of Aldermen —3; Borough President of Brooklyn—2; Borough President of Manhattan—2; Borough President of Queens—1; Borough President of Staten Island—1; and the Borough President of the Bronx—1. In the new Board of Estimate the Borough Presidents were represented as full voting members on every item, including budgeting.[5]

The 1901 Charter abolished the City Council but retained the Board of Aldermen as the new unicameral City Legislature. The Board of Aldermen could decrease, but not increase the budget.

The changes brought about by the 1901 Charter redistributed executive power away from the Mayor and toward the boroughs. The abolition of the city-wide Board of Public Improvements gave supervision over highways, sewers, and public buildings to the Borough Presidents, although financial control was vested in the Board of Estimate and Apportionment. The Borough Presidents now had broad executive powers involving the delivery of municipal services, as well as enhanced power with regard to borough planning and development. In addition, independent state funding of administrative offices like Sheriff, County Prosecutor, etc., reinforced the county as a prime unit of city government. The county governments were so important as a source of jobs that, in 1913, Tammany leader Charles F. Murphy persuaded the State legislature to make the borough of the Bronx into an independent County.

The Board of Estimate, however, remained the city's chief budget making and financial body. The Board's responsibilities included preparing the annual budget and setting the terms and conditions for expenditures. Although the Mayor and his slate of publicly elected city-wide officials could still command a majority of the votes on the Board, the inclusion of the Borough Presidents on the Board diminished his authority somewhat.

Under the 1901 Charter, the Board had the residual powers of the city, those powers not specifically granted to other agencies. The fact that this power gravitated to the Board was symbolic of its whole evolution. When other agencies of government functioned adequately, their powers were transferred to the Board—almost always a satisfactory alternative because of its representative character and its record of achievement.

From 1901 to 1938, the Board of Estimate continued to grow in power and prestige. In 1905, there was a scandal over the granting of a franchise by the Board of Aldermen to the Pennsylvania Railroad, and chapter 629 of the Laws of that year vested in the Board of Estimate and Apportionment control over franchises, as well as, with several exceptions, general "control of all the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and all other public grounds and water within or belonging to the City."[6] The powers of the Board of Aldermen in these areas were to be subject to Board of Estimate control.

In 1911, the Board gained the power to pass on improvements and make assessment therefor.[7] In 1916, it was empowered to create zoning regulations,[8] and in 1920 it



was made trustee of the City Employee Retirement System.[9]

*De jure* recognition of the Board's status was given in 1924, when it was constituted as the upper house of the municipal legislature, established under the new City Home Rule Law.[10] Although it was hoped that the lower house, the Board of Aldermen, would take the lead in legislative matters, leaving the Board of Estimate free to run the city's business, the goal was never realized. By 1932, the situation was such that the Joint Legislative Committee to Investigate the Affairs of the City of New York could write,

> The Board of Estimate and Apportionment has been increasing in power and prestige even more rapidly than the Board of Aldermen has been sinking in usefulness and public esteem. Today, it is essentially the governing body of the city, combining within itself policy-forming and legislative functions, for although some of these, it is true, must be shared with the Aldermen, their concurrence therein has very nearly become pro forma and indeed in a number of matters their concurrence is obligatory.[11]

The election of a Republican-Fusion Mayor and his slate of city-wide candidates in 1933 gave the new Mayor the votes needed to exercise working control over the Board of Estimate. However, the Mayor's advantage was undermined by a combination of chance and political circumstance. In 1934 the Comptroller died and the next year brought the death of the President of the Board of Aldermen also. In a special election held to fill the Comptroller's office, the incumbent Mayor's candidate was defeated by a Democrat. A Democrat also succeeded to the presidency

of the Board of Aldermen. These changes left the Mayor in a minority on the Board of Estimate.

Simultaneously a movement for Charter Revision supported by a diverse coalition of civic leaders and government officials, was gathering momentum. This movement came to fruition in the form of the Thacher Commission, whose members were appointed by the incumbent Mayor.

The Thacher Commission recommended that the duties of the Comptroller be divided into those which were clerical and those which required the Comptroller to act as the city's principal financial advisor. The clerical functions would be handled by a City Treasurer, appointed by the Mayor. The Treasurer's duties would include the collecting of all taxes, assessments and arrears due the city and their deposit in banks. This would include the money in the sinking funds and all other funds held by the city. A Bureau of City Collectors and a Bureau of Receipts would be under the control of the City Treasurer, and he would give a financial statement to the Board of Estimate once a month. The Treasurer could not make any disbursements without the approval of the Comptroller.

The mushrooming of federal public works projects during this period had taxed the Board of Estimate's planning capacity, resulting in a movement to relieve the Board of this vast responsibility. There was dissatisfaction with the Board's performance with the allocation of public improvement projects. The practice of "borough-courtesy" led to log-rolling on the Board, unnecessary and inefficient improvements in the boroughs, and an increase in the city's debt.

As a solution to this problem, the Thacher Commission proposed the creation of a five man City Planning Commission to be appointed by the Mayor with the members



serving staggered eight year terms. The City Planning Commission's functions included: the development of a master plan for the city, responsibility as custodian of the city map and all changes thereon, and overall charge of all projects and changes in the city's master plan after such a plan was developed. The City Planning Commission's report on such proposed changes could be overruled by a ¾ths majority vote of the Board of Estimate.

The City Planning Commission's capital budget, however, was not an appropriation document. The Board of Estimate had to approve it line-by-line, a power which allowed it to exercise close supervision of all capital expenditures.

Despite opposition from the Democratic organization, the Borough Presidents of Manhattan, the Bronx, Queens and Staten Island, the Thacher Commission's proposed charter was adopted by a two to one majority in the November 1936 election. Members of the Board of Estimate, hostile to the incumbent, saw the City Planning Commission as an attempt to increase the power of the Mayor at their expense.

The new Charter, which took effect January 1, 1938, reestablished a unicameral legislature consisting of a City Council with members elected through a proportional representation scheme, and abolished the Board of Aldermen. The so-called Municipal Assembly with the Board of Aldermen as the lower house and the Board of Estimate as the upper house, which had been established by the City Home Rule Law of 1924, was ended. The powers of the Borough Presidents over the maintenance of public buildings were transferred to the Department of Public Works, and those over building violations were transferred to the Department of Housing and Buildings.

The Thacher Commission said in its report,

> The relative functions of the Council and the Board of Estimate are altered in several important respects. The Council is the legislative body and is vested with the entire legislative power of the city. All municipal legislation is to be by local law, rather than by ordinance, and local laws may be initiated only in the Council, which will alone constitute the local legislative body under the City Home Rule Law. The primary function of the Board of Estimate, on the other hand, is to direct the business affairs of the city. It will have no control over legislation except that local laws having to do with certain subjects directly related to the organization and administration of the government and amendments to the Charter require its approval. It also passes upon the expense budget as submitted by the City Planning Commission. Local laws may be vetoed by the Mayor subject to the power of the Council to pass them over such veto by a two-thirds vote.[12]

The Board of Estimate exercises no control over legislation except to check the Council in respect to the organization and administration of the government and to approve or disapprove amendments to the Charter. It has general control over the financial policy of the city. It passes on the Mayor's budget, and is free to amend it by adding, increasing, decreasing or omitting items. After the Board of Estimate has passed the budget, it goes to the Council, which may only reduce or strike out the amounts appropriated for particular items. The Board of Estimate holds hearings, so that it is before this small group of elected officers



> that the people have an opportunity to criticize the budget or any item in it.[13]

The re-election, in 1937, of the incumbent Fusion administration and its city-wide slate obviated any confrontation between the Board of Estimate and the Mayor. In addition, the restoration of the incumbent Mayor's majority on the Board of Estimate retarded the development of the City Planning Commission as the independent body it was supposed to become. Another impediment was the case of *Childs* v. *Moses* which held, in 1942, that the City Planning Commission was an advisory body and could not execute city powers or expend city funds without the approval or acquiescence of the Board of Estimate.[14]

Under the 1936 Charter, all powers vested in the city, except as otherwise provided by law, were kept with the Board of Estimate as a protection against executive and legislative excesses. As the administrative body of the city, the Board was given power to fix salaries, approve franchises, authorize sales or leases of city property, and pass finally on matters involving the exercise of judgment with respect to finances.[15] It remained, in effect, a "board of directors" for the management and administration of municipal affairs. As a political body with managerial duties, the Board's basic function was to resolve conflicts between competing constituencies and interests.

The major thrust of the 1936 Charter was that it allowed the Board of Estimate to maintain its predominant position in city government. Despite a body of opinion favoring its abolition, the Board of Estimate was retained as an essential part of the decision-making process, because it was the body capable of reconciling neighborhood and city-wide interests.

The next major structural change in the Board of Estimate came in 1958, in response to the population growth in the boroughs of the Bronx, Queens, and Staten Island. Votes on the Board were redistributed; all the Borough Presidents were given two votes each, and each city-wide elected official was increased to four. Thus, the city-wide officials could still command a majority of the votes, though the Borough Presidents were now equal in power.

In spite of these alterations, the Board of Estimate was essentially the same as it had been in 1901. The city, however, had changed drastically. In 1901, the city was a loose consolidation of formerly autonomous entities. The growth of the subway system, the mass use of automobiles along the city's highway system, and the introduction of the telephone and television slowly integrated city life. Technology was making centralization of city government more feasible. The expansion of the city's budget and the ever-blossoming variety of services it provided led many to recommend such centralization.

In 1960, the State Commission on Governmental Operations of the City of New York (Moore Commission) criticized the city's system of government, especially the vesting of such broad powers in the Board of Estimate. The Commission concluded that the ambiguous diffusion of executive and legislative power among the Mayor, Board of Estimate, and City Council made it difficult for voters to assign responsibility for different policies. The Board's practice of reaching decisions *in camera,* prior to hearing public testimony, frustrated the voters who wished to participate in the decision-making process. The Commission proposed a strong Mayor, and a Council whose every important act was not subject to Board of Estimate veto; that latter body, in this view, should be largely limited to planning matters.





The political situation in 1961 gave added impetus to yet another movement for Charter revision. The Mayor decided to stand for re-election with running mates different from the incumbents, thereby exacerbating his differences with the five county leaders of the Democratic Party and the Borough Presidents, their political allies. In any case, there was the possibility that the political harmony of the Board of Estimate would not last beyond the November elections.

The Mayor gained from the State Legislature the power to appoint a charter revision commission (Cahill Commission), whose draft charter would be submitted to the voters on the November ballot. Such were the political possibilities of Charter revision that the City Council and the Board of Estimate refused to appropriate funds for the Commission's work. These tactics were unsuccessful, and both the Mayor and the new Charter were victorious in November.

The new Charter, which took effect on January 1, 1963, significantly reduced the Board of Estimate's power over the budget. The Board now shares with the City Council the power to alter the budget, but changes made by either body are subject to a mayoral veto which can be overridden only by a two-thirds vote on *both* bodies. The Board lost its line supervision of the expense budget; it now must approve or disapprove an entire program. Transfers are therefore less frequent, but in any case, are now on recommendation by the Mayor, and require approval of the Council as well as the Board of Estimate. The Mayor alone may make changes within a department between programs.

The Board's control over the capital budget was likewise decreased under the new Charter. It was to be an appro-

priation document, meaning that projects provided for in the capital budget do not require further appropriations by the Board. Such projects are to be initiated by the Mayor after a hearing by the Board. The Mayor, not the Board of Estimate, is empowered to authorize increases of up to fifteen percent of the cost of projects.

Most of the Board's control over personnel is transferred to the Mayor, to whom career and salary plans are submitted by the Personnel Director. The Mayor is authorized to reorganize departments without approval of the Board, as formerly required. City Council approval is now mandatory. The Mayor can, by executive order, create bureaux, divisions and positions within his own executive office.

As already indicated, the Board lost part of its control over the capital budget. It does, however, retain control over the zoning aspect of city planning, for it can approve, disapprove or modify recommendations of the City Planning Commission. It may adopt, by three-fourths vote, any zoning resolution which the Mayor has certified as necessary, but which the City Planning Commission has rejected. The Board still retains control over franchises, leases of waterfront property, the sale, leasing and assigning of city-owned property, regulations for letting contracts and related trusteeship functions. The Board also has certain powers conferred upon it by the State legislature (urban renewal plans, plans for public and publicly-assisted housing, grants of tax exemptions, etc.). However, the residual powers of the city are now vested with the Mayor, instead of the Board.

The Borough Presidents also lost executive power with respect to the delivery of city services within their respective areas. Though this change did not decrease the power



of the Board as a whole, it did reduce the Borough Presidents' influence.

The budgetary responsibilities of the Board of Estimate have been substantially limited by the 1961 Charter revision. This constitutes a reversal of the movement of power from Council and Mayor to the Board of Estimate which began in 1901. However, the central problem of ordering governmental priorities between the competing claims of neighborhood and city-wide interests still remains. Throughout the city's history the Board of Estimate has been the principal body where this conflict, and, most significantly, the resolution of this conflict, has been deliberately institutionalized.

As Walter Lippman wrote 37 years ago:

> The city is much too big to be governed as a single centralized unit. It is also too varied in its population and its occupations. It is also too old in the traditions of local independence. On the other hand, of course, the interests of the people in all the boroughs are much too closely related not to be dealt with under city-wide and co-ordinated policies.[16]

The conflict between city-wide and local priorities, which necessitated the creation of the Board of Estimate, still exists.

### *The Nature of the Board of Estimate*

It has been more than ten years since Charter revision last dealt with the powers of the Board of Estimate. At that time, the reallocation of responsibilities was designed to strengthen the Office of the Mayor. Despite the vast increase in the power of the Mayor's office since that revision,

the Board of Estimate has retained its position of primacy in the city government. The strength of the Board of Estimate rests, in part, on its mission "to direct the business of the City." [17] It is the ability to resolve policy and priority disputes that characterizes the Board's central and preeminent position in the city government. The members of the Board, each publicly elected, each with a broad and diversified constituency, and each in an executive position, when met and joined, represent a far greater concensus than any other executive body. Their relatively small number enables them to act more decisively than most legislatures.

The Board's jurisdiction and power has often been tested in the courts, and has always been sustained. The most recent major case, *Bergerman* v. *Lindsay*,[18] argued that since budget making was a legislative function, the Board of Estimate was violating the one-man, one-vote rule by giving Borough Presidents (who represent different sized populations) equal power over the budget. This case renewed the dispute as to whether the Board was a legislative, administrative or purely executive body. The court held that the one-man, one-vote principle did not apply to the Board on "city budget matters," as the Board was neither a legislative body nor the "general governing body" of the city (that being the City Council), nor a political unit vested with "general governmental powers." [19] The court opined, however, that until the 1963 Charter revision the Board did exercise far greater legislative powers than it does today. "In any case," the court continued, "the budget making powers of the Board of Estimate are at once closely conditioned and highly contingent on the action of other city agencies, executive and legislative. The Board is itself unable to make or reject a budget with



finality, or to add or delete an item in a budget beyond the further reach or further change by others." [20]

Nevertheless, the nature of the Board and of its functions is such that no precise label can be attached to it. The Thacher Commission claimed its activities to be executive rather than legislative,[21] and described it as an administrative body which "approves franchises, authorizes sales or leases of city property, and passes finally on matters involving an exercise in judgment." [22] It would be best to say that the Board of Estimate, because of its unique position, serves all of these functions and provides a forum for broadly based political decisions under close public scrutiny.

### *Structure of the Board of Estimate*

In its role as the "board of directors" of the City of New York, the Board of Estimate is aided by the Bureau of the Secretary and the Bureau of Franchises, the two permanent agencies under the Board.

#### *Bureau of the Secretary*

The Bureau is headed by the Secretary who is appointed and removed at the pleasure of the Board. The Secretary's duties are:

a) preparation of the calendar for Board meetings;

b) publishing journals of the proceedings at Board meetings;

c) distributing to each member copies of all communications, petitions, reports, and the like, which appear on the calendar;

d) sending to each department concerned copies of resolutions passed by the Board, and in return, sub-

mitting to the Board such recommendations and reports on these matters as are submitted by the departments.

*Bureau of Franchises*

The Bureau is headed by a Director who is appointed and removed at the pleasure of the Board. The Director's duties are:

a) reporting to the Board of petitions for franchises, revocable consents, and related matters;

b) filing copies of all franchises and contracts with the Office of the Comptroller, Director of Finance, Corporation Counsel, New York City Transit Authority, and the City Clerk, Department of Transportation of New York State.

Franchise requests concern such items as changes in bus routes, subways, CATV, etc., whereas revocable consents grant permission for constructing bridges over streets and between buildings, laying underground pipes, conduits, and tracks for private use, and provides guarantees to the city for such use. These consents are revocable at any time by resolution of the Board, which also provides for adequate compensation.

In addition, the Board has also created a Committee for Acquisition and Disposition of City Property, which deals with matters relating to real property. This Committee is composed of the Mayor, the Comptroller, and the President of the City Council.

The Board of Estimate's staff is rather small, since each member has his own staff which researches and reports on the various items appearing on the calendar. In addition,



the Board draws on the Budget Bureau and other mayoral agencies for reports and opinions.

*Procedures of the Board of Estimate*

Much of the public criticism of the Board of Estimate is directed at procedures which are asserted to be unresponsive, inconvenient or undemocratic. More often than not, the real objection is to the decision of the Board rather than to the method of achieving it.

The City Charter provides that the Board establish its own rules (Appendix B). It should be noted however that many rules are established by the Charter, Administrative Code, or other provisions of law.

Less evident than the formal rules of procedure are the processes preceding the public hearing. The control of the calendar, the initiation of calendar items and the informal decision processes must be understood to appreciate the seeming lack of controversy on the majority of Board of Estimate decisions. In theory, the public may have any communication, petition or resolution requiring action by the Board calendared by the Secretary. In practice, this route is rarely used, and "public" items on the calendar are generated by the members of the Board or by governmental agencies. Inherent in this practice is a selection process. In the case of agencies the process is subject to all the administrative constraints and delays that pertain to bureaucracy. It must, however, be understood that these processes serve a dual purpose. Obviously, the great majority of the issues before the Board are of negligible interest to the general public (contracts for overhauling a generator, purchase of accounting machines, consent to use city streets for burglar and fire alarm cables). Many of these mundane problems will have been the subject of sub-

stantive controversy as well as agency politics. Clearing the bureaucratic hurdles will tend to compromise the politics and clarify the substance, so that the Board usually receives the calendar item after the controversy has been resolved. One of the Board's effects, therefore, is to force the bureaucracy to come to grips with, and resolve, underlying controversies inherent in even mundane matters of city business. It is, in a very real sense, the political and ethical conscience of the bureaucracy.

The public interest in more prominent issues is also evident long before the Board of Estimate public hearing. Many items come to the calendar via hearings at the City Planning Commission, via presentation to the local Community Board, or after discussions with the affected Borough Presidents or city-wide member of the Board. It is not uncommon for civic groups and community organizations to direct major public relations efforts at the members of the Board well before an item appears on its calendar. In view of this, it is hardly surprising that the image of controversy at public hearings is often absent; needless to say, agreement or compromise underlie each of the Board's decisions.

There is also a selection process in the way other items arrive on the Board calendar. In the case of requests for services or supplies by city agencies, it is mayoral practice that they first be approved by the Mayor's office before they can be sent to the Secretary to be placed on the calendar. Petitions for franchises are now rerouted from the Secretary to the Director of Franchises, or are sent to him directly. The Director will then forward the request to the agency that will be affected (i.e. Department of Highways, Department of Buildings) and await their report.



He will tell the petitioner whether he will approve or disapprove it. Because of this process, certain franchise requests never reach the calendar itself, although the petitioner is entitled by law to have his request brought before the Board despite the disapproval of the Director of Franchises.

Similarly, items concerning the acquisition or sale of real property should be referred to the Acquisition and Disposition Committee for further referral to the Real Estate Department. In fact, the Committee has become an extension of the Department, which evaluates the request and, if approved, forwards it to the Secretary.

Individual members of the Board can also have items placed on the calendar by simply informing the Secretary. Before a Board member will place an item on the calendar, it will have undergone scrutiny by his personal staff, and will stand an excellent chance of being approved by the entire Board membership. Matters requiring Board approval also come from various other sources. These include: the City Planning Commission, the Director of the Budget, the Director of Real Estate (on matters concerning the disposition of property, the Department of Real Estate will first check with the various city agencies to see if they want to "hold" a particular parcel of land, and if not will automatically place it on the calendar), citizens and public bodies, and County and State officials. One power which the Board possesses is the ability to effectively delay taking action on any particular item on the calendar. The courts have already ruled, in the matter of Ungar (Wagner),[23] that a petitioner cannot insist that the Board hear his petition on a specified date, since it is discretionary with the Board when it will hear and determine petitions.

Once the calendar has been prepared by the Secretary, and usually on the day preceding the public meeting, the Board meets in executive session to discuss the items, to determine on which matters there is agreement, which matters require further study, and which, if any, are to be argued. Since a great number of the items appearing on the calendar have been laid over from previous sessions or are returning after having been referred to an agency, Board members will be well informed on the controversies involved, through briefings provided by their staffs and the different departmental reports. Those items on the calendar for the first time will generally be referred to the city agencies most affected for further information and/or approval. There are also a small number of communications, reports, etc., dealing with matters that have already been resolved, and these matters are merely filed. These are placed on the calendar *pro forma,* to acknowledge that they have been received by the Board.

The executive session, an informal and confidential meeting at which no record of the proceedings is taken, creates the optimum conditions for the Board to assert its unique role in the city's governmental process. In attendance are the members of the Board (or their deputies), the Secretary, the Director of Franchises, the Director of the Budget and representatives of the agencies with items on the calendar. The members will be briefed on the items and will reach quick agreement on a certain number of them. If there is some difficulty in reaching a concensus, the room may be cleared so that the members can discuss that particular item; this often enables the Board to find areas of agreement around which a compromise may be fashioned.

At these sessions, there are three alternatives available to the Board. It can decide on a unanimous vote (which



due to the previous selection process, occurs most often), or it can reach an agreement on a majority vote. This will occur where the entire Board agrees that an item should be moved, but one or more members have insurmountable objections or have received great pressure to vote in a particular fashion. Finally, they can agree to lay an item over or refer it back to an agency, which will generally occur when more information or expertise is required to reach a clear decision, or when there is public opposition to it. Each member by participating in the executive sessions is expected to hold on to his position at the public meeting and only the rare instance of new and persuasive testimony or an overwhelmingly negative public reaction will change the positions of the Board members after the executive session. In such instances, the Board has the option to lay the item over to a future session for consideration, after closing the hearing, or it may indeed lay the item over, but continue the hearing and invite more public testimony. It should be noted that certain items need a ⅔ or ¾ majority for approval, and that a unanimous vote is required to add something to the calendar (see Rules of Procedure, Appendix B).

While it is true that some form of agreement has been reached by the Board members at the executive sessions, the open meeting serves as a forum at which the general public can express their views on any of the items appearing on the calendar. Since items requiring an open hearing have to be advertised in the local press and the City Record several days before the hearing, the public has the opportunity to testify on matters concerning their community. The relatively low turnout for public hearings is primarily due to the nature of the bulk of the Board's business. The majority of decisions which the Board makes deal with matters of governmental rather than public controversy.

That is not to say that the citizens of the city do not arouse themselves when a particular interest is at stake. Pressure is exerted on individual Board members by community leaders, clergymen, and political personalities, through mailings and phone calls. Indeed, the appearances by partisans in the Corona and Forest Hills affairs vividly demonstrate what public pressure can accomplish when applied. Communities have also become much more sophisticated and increasingly aware of the power they can wield. Thomas Cuite, City Council majority leader, recently stated in the *New York Times* (March 19, 1973), "The local boards (Community Planning Boards) have developed good spokesmen, who know what they're talking about and who know that just standing around and screaming does not get bills passed." Whereas it is true that testimony before the Board is generally related to a narrow, local interest, the Board invites rather than rejects this comment and advice. Suggestions by good government groups, community organizations, etc., are always welcomed and often helpful. The opportunity exists for all individual citizens and groups to avail themselves of this forum and to raise relevant issues before the eight highest elected officials of the City of New York. The intensity of public reaction can, and does, affect the members of the Board.

Critics of the Board of Estimate's present procedures argue that the Board should not reach decisions in executive sessions prior to public hearing. Conceivably, the Charter could mandate that the Board adopt a decision at a meeting subsequent to the public hearing. Apart from the question of whether the Board's rules of procedures are an appropriate subject for the Charter, such a rule would serve to delay decisions on the overwhelming majority of items on which there is no controversy. Furthermore, since virtually all controversial items have previously been subject of public debate, this rule would be a dubious benefit even with regard to such items.



### *The Board of Estimate Calendars*

The powers granted to the Board of Estimate by the City Charter, the Administrative Code, the General Municipal Law, the General City Law, and various State statutes fall into eight major categories. (See Appendix A.) The powers are:

1. Use of property of or for the city. This includes leasing out city owned property for private use, and leasing privately owned real property for city use.
2. The purchase or sale of any real property on behalf of the city.
3. The right to award franchises and revocable consents on behalf of the city. This includes new bus routes, sidewalk cafes, cable television, bridges, tunnels, pipes, and conduits.
4. Granting relief from public letting for purchases and contracts made with the city.
5. Public improvements in the city.
6. Changes in the city map, including street line modifications, street closings, grading of sidewalks and roads, and changing zoning regulations and restrictions.
7. All matters dealing with budgetary and financial matters, such as the expense and capital budgets, tax abatement and relief, rent increases, and

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

awards to Police and Fire Department employees killed or injured in the line of duty.

8. Other miscellaneous items such as the disposal of obsolete records belonging to city agencies, and various communications brought to the Board for administrative action.

A detailed analysis was made of the calendar items coming before the Board during six of its semi-monthly meetings. The examined meetings took place on January 14, January 28, February 11, March 11, July 22, and November 11, 1971. A total of 1,703 calendar items were examined.

This examination was undertaken to determine: a) whether the powers accorded the Board by the City Charter were being used by the Board, and whether the Board was acting on items which were not in its jurisdiction; b) how the different items coming before the Board were voted upon; and, c) the extent of public appearances before the Board in support or opposition to an item.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

*Analysis of Board of Estimate Calendars*

*Legend:*

*Calendars Used:*

A.—January 14, 1971.

B.—January 28, 1971.

C.—February 11, 1971.

D.—March 11, 1971.

E.—July 22, 1971.

F.—November 11, 1971.

*Powers of the Board of Estimate.*

1. Use of real property of/for city.
2. Acquisition/disposition of property.
3. Franchises and revocable consents.
4. Contracts.
5. Public improvements.
6. Planning and zoning.
7. Budget and finance.
8. Other items.

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

**TABLE "A"**

*Breakdown of each calendar*

*Calendar A—January 14, 1971*

| | 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| Unanimous | 37 | 43 | 6 | 41 | 0 | 15 | 13 | 1 | 156 |
| Majority | 0 | 0 | 0 | 26 | 0 | 0 | 0 | 0 | 26* |
| Laid over | 8 | 5 | 6 | 0 | 2 | 12 | 3 | 1 | 37 |
| Referred | 1 | 1 | 5 | 22 | 1 | 5 | 0 | 0 | 35 |
| Filed | 1 | 2 | 2 | 9 | 0 | 3 | 5 | 1 | 23 |
| Withdrawn | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 3 |
| | 47 | 51 | 19 | 101 | 3 | 35 | 21 | 3 | 280 |

*Calendar B—January 28, 1971*

| | 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| Unanimous | 39 | 21 | 5 | 17 | 2 | 11 | 10 | 1 | 106 |
| Majority | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Laid over | 9 | 3 | 5 | 1 | 0 | 7 | 3 | 1 | 29 |
| Referred | 0 | 1 | 8 | 9 | 0 | 3 | 7 | 0 | 28 |
| Filed | 0 | 8 | 2 | 2 | 0 | 5 | 8 | 0 | 25 |
| Withdrawn | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 48 | 34 | 20 | 29 | 2 | 26 | 28 | 2 | 189 |

* Twenty-two of these items were considered under the Ghetto Medicine Act (Section 967 of the Public Health Law, Laws of 1968.)



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

**TABLE "B"**

*Breakdown of each calendar*

*Calendar C—February 11, 1971*

| | 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| Unanimous | 39 | 21 | 3 | 26 | 1 | 17 | 77 | 1 | 185 |
| Majority | 0 | 0 | 0 | 1 | 0 | 1 | 1 | 1 | 4 |
| Laid over | 12 | 4 | 2 | 0 | 0 | 8 | 6 | 0 | 32 |
| Referred | 2 | 1 | 2 | 16 | 0 | 4 | 2 | 1 | 28 |
| Filed | 0 | 1 | 0 | 6 | 0 | 0 | 3 | 1 | 11 |
| Withdrawn | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 53 | 27 | 7 | 49 | 1 | 30 | 89 | 4 | 260 |

*Calendar D—March 11, 1971*

| | 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| Unanimous | 36 | 27 | 7 | 22 | 0 | 18 | 15 | 6 | 131 |
| Majority | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Laid over | 12 | 2 | 6 | 2 | 0 | 14 | 11 | 1 | 48 |
| Referred | 2 | 1 | 10 | 39 | 0 | 14 | 7 | 0 | 73 |
| Filed | 1 | 8 | 6 | 2 | 0 | 4 | 6 | 1 | 28 |
| Withdrawn | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| | 51 | 38 | 30 | 65 | 0 | 50 | 40 | 8 | 282 |

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

TABLE "C"

*Breakdown of each calendar*

*Calendar E—July 22, 1971*

| | 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| Unanimous | 43 | 49 | 18 | 55 | 0 | 28 | 17 | 9 | 219 |
| Majority | 0 | 1 | 0 | 2 | 0 | 3 | 0 | 0 | 6 |
| Laid over | 8 | 13 | 0 | 6 | 1 | 20 | 9 | 0 | 57 |
| Referred | 5 | 2 | 25 | 57 | 0 | 8 | 8 | 1 | 106 |
| Filed | 3 | 12 | 7 | 2 | 0 | 6 | 11 | 3 | 44 |
| Withdrawn | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 59 | 77 | 50 | 122 | 1 | 65 | 45 | 13 | 432 |

*Calendar F—November 11, 1971*

| | 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| Unanimous | 18 | 21 | 5 | 50 | 0 | 9 | 56 | 0 | 159 |
| Majority | 0 | 1 | 0 | 9 | 0 | 1 | 1 | 1 | 13 |
| Laid over | 6 | 5 | 2 | 11 | 0 | 13 | 8 | 0 | 45 |
| Referred | 0 | 3 | 3 | 4 | 0 | 1 | 19 | 1 | 31 |
| Filed | 1 | 1 | 2 | 2 | 0 | 1 | 3 | 1 | 11 |
| Withdrawn | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| | 25 | 31 | 12 | 77 | 0 | 25 | 87 | 3 | 260 |



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

*Distribution of Powers*

An analysis of the six studied calendars (Table D) demonstrates that 26.0% of the items dealt with contracts, 18.2% of the items dealt with budget and finance, 16.6% of the items dealt with the use of real property of/for the city, 15.1% concerned the acquisition or disposal of city property, 13.4% concerned planning and zoning, 8.1% dealt with franchises and revocable consents, 0.6% dealt with public improvements, and 2.0% were "other items." The low figure for public improvements is not truly indicative of the Board's involvement in these matters. Although the Board of Estimate is empowered by the City Charter (Section 230.e) to undertake improvements and repairs of sidewalks, etc., it was found that the majority of these items also required some kind of budgetary or zoning action. Therefore, most of the items for public improvements are handled through the Board's power over zoning and the budget.

Only 33 items out of the 1,703 examined fell into the "all other" category. Minor regulations in the Administrative Code and the Rules of the Board of Estimate empowered the Board to act on the vast majority of these diverse items. It only one case (Item 248, Calendar D) was the Board not directly empowered to act. This item concerned an agreement for the exchange of easements for a subway entrance between four different parties. The request was made to the Mayor's Office, but it was his belief (expressed by the Corporation Counsel) that the Board of Estimate should resolve the matter. Despite this one example, it is clear that the Board exercises its power only through explicit statutory authorization. Surprisingly, in not a single instance among the items examined, did the

CALENDAR D—March 11, 1971

## No. 248

R-9433

RESOLUTION for adoption, recommended by the Director of the Budget, the proposal to approve and accept an agreement between Fisher Brothers 47th Company, the City of New York, the New York City Transit Authority and Owners of property located at the south-west corner of West 47th Street and Avenue of the Americas, Manhattan, for the exchange of easements for a subway entrance to the 47th-50th Streets—Rockefeller Center Station of the New York City Transit System.

REPORT of the Director of the Budget, dated February 23, 1971 stating that, although this request was presented to the Office of the Mayor for approval, it is the opinion of the Budget Director's Office, and concurred in by the Office of the Corporation Counsel, that this request for approval is more properly within the jurisdiction of the Board of Estimate and is therefore submitted for such approval.

Under an existing agreement with the City dated March 22, 1938, the Owner has the right to relocate the existing subway entrance, which was constructed through the building on the premises, to another location on the premises, subject to the consent of the Board of Estimate. The building on the premises has been demolished and a new building is being constructed thereon. The subway entrance has been temporarily relocated in the sidewalk of Avenue of the Americas. It will be permanently relocated within the new building.

The proposed agreement provides for the construction and maintenance of the new subway entrance by Fisher Brothers 47 Company, a limited partnership, which is the lessee of the premises for a term of 50 years with an option to renew for an additional 25 years. The Lessee will provide liability insurance and will deposit $50,000 as security for the performance of the work. The work is to be completed within 18 months from the commencement of the construction of the building and all work must conform to plans approved by the Chief Engineer of the Transit Authority. The Owner assumes the rights and obligations of the Lessee whenever there is no lease in effect requiring the lessee to perform the obligations imposed by the agreement.

Note: Agreement not received.

Resolution for adoption.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

Board exercise a power gained under the "residual powers" clause, which it had until 1963. In fact, throughout our research, only one power was discovered which the Board had assumed, and which had not been specifically assigned to it. This dealt with the power to make loans for middle-income housing. "The unvaried practice has been for the Board to approve the amount of City loans, and the Legislature may be presumed to have been aware of the practice when it passed the HDC Act. Whether the Legislature intended, without saying so, that the Board should also approve the amount of HDC loans depends on the reason for the practice with respect to City loans and the applicability or non-applicability of the same rationale to HDC loans.

"The predecessor sections of Article 2 (Private Housing Financial Law) were first enacted in 1955. They empowered both the State and the City to make Mitchell-Lama loans and contemplated such loans by private institutions. Then, as now, there was no provision for any approval of the amount of a loan, whatever its source. It seems reasonable to infer that the Legislature envisaged that the body making a loan and providing the funds would determine the amount thereof, in accordance with whatever general provisions of law were applicable to that body. That is, with respect to a City loan, the Charter would dictate the necessary procedures. At that time the 1938 Charter was in effect. It said nothing about which agency or official would make City loans for middle-income housing but did vest in the Board all residual powers of the City. By virtue of these powers, it was the Board itself which actually made City loans for this purpose the Board was the City. When the 1963 Charter vested the residual powers in the Mayor, Board approval of the loans con-

tinued to be sought even though the power to make the loans lay with the Mayor. Mayoral acquiescence in this practice may be interpreted as recognition of the Board's concern with actions which can have an impact on the City's constitutional debt-incurring powers and, therefore, on the capital budget. However, it would be a *non sequitur* to conclude from this practice, or from presumed legislative awareness of it, that the Legislature intended *sub silentio* to read into the statute a requirement that the Board pass on the amount of loans made from other than City funds." [24]





TABLE "D"

*Breakdown of Calendars According to Distribution of Powers*

*All Calendars*

| | A. | B. | C. | D. | E. | F. |
|---|---|---|---|---|---|---|
| 1. | 47 | 48 | 53 | 51 | 59 | 25 |
| 2. | 51 | 34 | 27 | 38 | 77 | 31 |
| 3. | 19 | 20 | 7 | 30 | 50 | 12 |
| 4. | 101 | 29 | 49 | 65 | 122 | 77 |
| 5. | 3 | 2 | 1 | 0 | 1 | 0 |
| 6. | 35 | 26 | 30 | 50 | 65 | 25 |
| 7. | 21 | 28 | 89 | 40 | 45 | 87 |
| 8. | 3 | 2 | 4 | 8 | 13 | 3 |
| *Total No. Items Per Calendar* | 280 | 189 | 260 | 282 | 432 | 260 |

TOTALS

1. Use of real property of/for city. – 283 items = 16.6%
2. Acquisition/disposition of property. – 285 items = 15.1%
3. Franchises and revocable consents. – 138 items = 8.1%
4. Contracts. – 443 items = 26.0%
5. Public improvements – 7 items = 0.6%
6. Planning and zoning. – 231 items = 13.4%
7. Budget and finance. – 310 items = 18.2%
8. Other items. – 33 items = 2.0%

TOTAL ITEMS CONSIDERED — 1703

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

*Voting Analysis*

An examination of the six calendars under discussion (Table E) demonstrated that 56.1% of the items passed by a unanimous vote 17.6% of the items were referred, 14.6% were laid over, 8.3% were filed, 3.1% were passed by a majority vote, and 0.3% were withdrawn. The 56.1% figure is not an accurate indication of the degree of unanimity on Board votes. In effect, 40.8% of the items appearing on the calendar are laid over to be voted upon at some future time. Items are referred to a bureau or committee for further information, filed away, withdrawn from the calendar altogether, or just laid over.

A truer indication of the Board of Estimate's unanimity is shown by examining only those items on which a vote was taken. The Board reached a decision on 1,007 (59.2%*) of the calendar items studied; and among these items, 94.8% were passed unanimously.

This high degree of unanimity is one of the most striking aspects, adds further substance to the argument that negotiations, of which there is no substantive proof, have taken place before the public meeting. Also, based on the high degree of unanimity, one must conclude that Board members have made their decision before appearing at the public meeting. In addition, only 42 of the 1,008 items were amended or modified before being passed by the Board.

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* A study undertaken by the Moore Charter Revision Commission in 1960 showed that a decision was reached on 62% of the items appearing on the Calendars. The unanimity figure in the 1960 study was 99.5%, nearly 5% higher than in the present analysis. The fact that there is slightly less unanimity at present could be explained by several factors: the different political make-up of the Board, the different personalities involved, and public awareness of the pressures that can be brought to bear.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

TABLE "E"

*Breakdown of Calendars According to Votes on the Items*

*All Calendars*

| | A. | B. | C. | D. | E. | F. |
|---|---|---|---|---|---|---|
| Unanimous | 156 | 106 | 185 | 131 | 219 | 159 |
| Majority | 26* | 1 | 4 | 1 | 6 | 13 |
| Laid over | 37 | 29 | 32 | 48 | 57 | 45 |
| Referred | 35 | 28 | 28 | 73 | 106 | 31 |
| Filed | 23 | 25 | 11 | 28 | 44 | 11 |
| Withdrawn | 3 | 0 | 0 | 1 | 0 | 1 |
| *Total number of items* | 280 | 189 | 260 | 282 | 432 | 260 |

* Twenty-two of these items were considered under the Ghetto Medicine Act.

*Totals*

| | | |
|---|---|---|
| Unanimous vote | — 956 | = 56.1% |
| Majority vote | — 51 | = 3.1% |
| Laid over items | — 248 | = 14.6% |
| Referred items | — 301 | = 17.6% |
| Filed items | — 142 | = 8.3% |
| Withdrawn items | — 5 | = 0.3% |

*Total number of items considered — 1703*

*Controversial Issues*

Although only 5.2% of all the calendar items on which the Board took action were passed by a majority instead of unanimously, an examination of the categories (Table F) shows that 74.5% of these majority votes concerned contracts. Specifically, 43.1% of the majority votes dealt with Ghetto Medicine contracts. Planning matters constituted 10% of the majority votes, budget 6%, acquisition and disposal of city property 6%, and "Other Matters" 4%. If the number of majority votes is an indication of the controversiality of the items before the Board, then one would have to conclude that contracts and planning are the most important matters decided by the Board.

This conclusion is born out by an examination of the items which prompted members of the public to appear before the Board (Table H). Some 41.8% of all public testimony before the Board concerned contracts, 26.6% of the public appearances concerned planning and zoning, 11.4% were for acquisition and disposal of city property, 7.6% for both budget and use of real property of/for the city, 3.4% for franchises and revocable consents and 1.2% for public improvements.

More significantly, however, is the fact that although the public made appearances before the Board on only 4.6% of the calendar items (7.8% if only the voted items are considered), 54.9% of the majority votes came on issues where public testimony had been heard.

In addition, 20% of the items withdrawn came after public testimony, compared with an overall withdrawal rate of 0.3%. Some 19% of the items were laid over after public appearances, whereas 14.5% of all items in general were laid over. (See Tables E & G.) One could safely con-



clude, on the basis of base figures, that public testimony (which may in itself be a measure of controversialism) has a significant effect on the actions of the Board.

The 1960 Moore Commission Study found that the public testified before the Board on only 6.0% of the items (comparable to the present rate of 4.6%). It would appear that the number of people now taking advantage of the public forum that the Board of Estimate provides has not changed substantially since 1960.

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

TABLE "F"

*Breakdown of Votes According to Board Powers*

| | Un. | Maj. | La. Ov. | Ref. | File | With. |
|---|---|---|---|---|---|---|
| 1. Use of prop. | 212 | 0 | 55 | 10 | 6 | 0 |
| 2. Acq./dis. | 182 | 3 | 32 | 9 | 32 | 0 |
| 3. Franchises | 44 | 0 | 21 | 53 | 19 | 1 |
| 4. Contracts | 211 | 38* | 20 | 147 | 23 | 4 |
| 5. Pub. Improv. | 3 | 0 | 3 | 1 | 0 | 0 |
| 6. Planning | 98 | 5 | 74 | 35 | 19 | 0 |
| 7. Budget | 188 | 3 | 40 | 43 | 36 | 0 |
| 8. Other | 18 | 2 | 3 | 3 | 7 | 0 |

* Twenty-two of these items were considered under the Ghetto Medicine Act.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

TABLE "G"

*Public Testimony Before the Board*

Appearances by members of the public and subsequent action taken:

*Calendar*

A. 27 items (4 by unanimous vote; 22* by a majority; 1 laid over.)

B. 6 items (6 by unanimous vote.)

C. 6 items (2 by unanimous vote; 1 by a majority; 3 laid over.)

D. 6 items (1 by unanimous vote; 5 laid over.)

E. 14 items (7 by unanimous vote; 4 by a majority; 3 laid over.)

F. 20 items (15 by unanimous vote; 1 by a majority; 3 laid over; 1 withdrawn.)

*Total number of items on which appearances were made—79*

*Breakdown*

By unanimous vote—35 items.

By majority vote —28 items of which 22 were Ghetto items.

Laid over —15 items.

Withdrawn — 1 item.

* These items were under the Ghetto Medicine Act.

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

TABLE "H"

*Breakdown of Appearances Before the Board*

*Number of appearances pertaining to:*

| | |
|---|---|
| 1. Use of real property of/for the city | — 6 items. |
| 2. Acquisition/disposition of property | — 9 items. |
| 3. Franchises and revocable consents | — 3 items. |
| 4. Contracts | —33 items.* |
| 5. Public improvements | — 1 item. |
| 6. Planning and zoning | —21 items. |
| 7. Budget and finance | — 6 items. |
| 8. Other items | — 0 items. |

* Twenty-two of these items were under the Ghetto Medicine Act.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

*Powers and Functions of the Board of Estimate*

a) Should the Board have the power to lease out city owned property or rent real property for city use?

The Board of Estimate may "grant leases of city property and concessions for the use of city property and enter into leases of property to the city for city use." (Charter, Section 67.1) It also holds a variety of subsidiary, if infrequently exercised, powers in this area, such as the granting of locations to the Fire Department (Administrative Code, Section 67(2)(2.0), or the power to designate any building in the city a common jail (Administrative Code, Section 67(2)(3.0), or any city owned property as a central live poultry market (Agriculture and Markets Law, Section 267a). Most of the Board's decisions in this category, nevertheless, fall under its general jurisdiction over uses of property by the city government, either as a lessor or lessee.

Although the Board holds the power of final decision in these matters, the Department of Real Estate is at the center of the process. This department was created in 1959 to replace the old Bureau of Real Estate, an agency of the Board of Estimate. The Commissioner of Real Estate is now appointed by the Mayor. At the Board's direction, the Department of Real Estate investigates any proposed lease or other use of city property and reports to the Board as to whether or not such use of city property is in the public interest. In the vast majority of cases, the Board follows the Department's recommendations.

Item Number 37 on the Board's January 28, 1971 calendar is a typical request by a city agency for Board approval of its rental of building space. In this item the Department of Real Estate recommended approval of the

CALENDAR B—January 28, 1971

**No. 36**

R-12891

IN THE MATTER of a report of the Commissioner of Real Estate, dated April 20, 1971 authorizing a lease for use by the Health Department as a Methadone Clinic, space

in the building at 90-16 Rockaway Beach Boulevard, Queens, for five years at annual rental of $4,500 for the first two years, and $4,800 for the last three years.

On April 22, 1971 (Cal. No. 404) and May 20, 1971 (Cal. No. 453) and June 17, 1971 this matter was laid over; on the latter date (Cal. No. 52) to this meeting.

For consideration—one resolution.

CALENDAR E—July 22, 1971

**No. 37**

R-11996

RESOLUTION for consideration, recommended by the Commissioner of Real Estate, authorizing the payment of rent on a month-to-month basis, without the necessity of a lease for a period not to exceed one year from February 17, 1971 for 4,800 square feet of floor space at 53 Worth Street, Manhattan for use by the Department of Personnel at a rental at the rate of $20,000 per annum (Committee Cal. No. 48).

REPORT of the Commissioner of Real Estate, dated January 12, 1971, stating that the Department of Personnel has requested that they be permitted to continue to occupy the premises on a month-to-month basis, since they intend to move this facility to 40 Worth Street, when space is available there.

This tenancy would be at the same rent and on the same terms and conditions that govern the present occupancy of the premises.

For consideration—one resolution.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

location and the amount of the rent, and the Board approved the "nonlease" rental unanimously.

But not all such items are so easily decided. The location of methadone clinics, for example, often ignites community conflict. Few quarrel with the goals of addiction treatment, control and rehabilitation, but many citizens oppose the placement of such clinics within their own communities. The expressed fears of increasing "addict" traffic, deteriorating property values, etc., are major obstacles to the establishment of such centers.

The disposition of Item Number 36 on the July 22, 1971 calendar is a case in point. After three appearances on the calendar the resolution was "referred back" to the Department of Real Estate.*

Day care center leases also provide the Board of Estimate with opportunities for social policy direction. Since most communities desire the establishment of such centers, the Board can act quickly (as it usually does.) It should be noted, however, that Board members may demand, even insist, that the Department of Social Services agree to provide similar services in other parts of the city as the

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* The history of this item is noteworthy in that it indicates how effectively local pressures can affect the decisions made by the Board of Estimate. This item was originally placed on the calendar on April 22, 1971. It was an addition to the prepared calendar at the request of the Mayor's office, which would mean that it was a matter of some urgency. According to the New York City Department of Health, there was very strong community opposition to the placing of a methadone clinic in that area, and although there is no substantive proof of this by reading the record of the Board meetings, it is evidenced by the fact that it was laid over three times and finally referred back to the Department of Real Estate. This is one method of denying authorization. A recent telephone call to the Health Department informed us that local opposition to a methadone center in that area was still great. As late as March, 1973, no alternative location had achieved even the status of referral to the Department of Real Estate.

price of agreement to the departmental policies and priorities.

It is in these under-exposed negotiations that the Board of Estimate provides the balance between executive decision and public need. The Charter must assign such jurisdiction in entirety if the function is to continue.

If one were to remove jurisdiction over city property from the Board of Estimate, one could relocate it in several places. One would be the Department of Real Estate. The Department of Real Estate has the facilities and the expertise to handle such matters, possibly more expeditiously than the Board. Such centralization, however, would come at the expense of review by elected officials, a necessary ingredient in the settling of controversial questions.

Another alternative, delegation of these powers to Community Boards, would possibly heighten local involvement, at least on some questions. However, the great majority of leases negotiated for the city are of little interest to the general public. There are some publicly recognized uses that generate interest in the lease contracts before the Board of Estimate. The examples used in this discussion, a methadone maintenance clinic and a senior citizens recreational facility, are deliberately chosen for their position at the extremes of community desirability.

The present procedure for initiating a lease between the city and a private landlord is for an agency—the Department of Health in the case of the methadone maintenance clinic, and the Model Cities Administration or the Department of Social Services for the senior citizens recreational center—to select a location and then ask the Board of Estimate, through the Department of Real Estate, to approve the site and the proposed lease.

Local initiative in either situation would usually be a voluntary agency which may or may not have a base in



the community. Ordinarily, the operation of these types of facilities requires the resources and skills of a voluntary agency. The charitable groups are, of course, quite expert in proposing programs to city agencies and elected officials. There is little question that such organizations can, and do, petition Community Boards and Borough Presidents.

The need for such facilities is generally easily demonstrable, but local public support for any drug addiction related program is virtually non-existent. The arguments against the establishment of such programs are: 1) another community has more addicts, and 2) the establishment of such a facility will draw addicts to this locality.

The creation of senior citizen services in leased space is almost always supported. It is seen as a "stabilizing" influence, a no-cost added city service, and as a provider of "premium" para-professional employment opportunities in the neighborhood.

While more leeway might be given to the local boards in initiating requests, it should be understood that in nine out of ten instances, leases proposed by the Department of Real Estate deal with matters such as finding office space for various city agencies and are of no interest to the average citizen. The Charter has always stated that the Board of Estimate has the power to "enter into leases of property to the city for city use." (Charter, Section 67.1) Since leases are signed on behalf of the city, the final decision should, naturally, be made by a central body representative of the city as a whole. In fact, the ability of public bodies to delegate power is severely restricted by state statutes, and the courts could easily rule that, absent new state law, the power to enter into leases *must* be exercised by the city as a whole.

Local review would be welcome in deciding whether or not a clinic or a center was necessary in the district and

on site selection. However, review of the economic terms and conditions of a proposed lease would require substantial duplication of the staff of the Department of Real Estate.

There is now ample opportunity for communities to "review" and even in certain instances to "veto" proposals made by the city. Using the specific item of the methadone maintenance clinic, the Department of Health has confirmed that for the past two years community opposition has prevented a methadone clinic from being located in Far Rockaway. Here is a clear example of the residents of a district succeeding against a city agency. If this were carried out on a large scale, the city would become ungoverned because policy matters of city-wide importance could be stymied by local resistance. The success of the residents of Far Rockaway in pressuring their Councilman, Borough President, etc., indicates that a district can have its wishes acceded to.

If a decision were made to give local bodies powers of "review" and "veto" over proposed leases, the city would have to provide independent staffing and expertise for each district, and would have to create facilities equal to those of the Department of Real Estate in each borough. Whatever gains would be made by involving the community more intimately in the matter of making leases would probably be offset by the higher taxes which would have to be imposed to support the increased staff.

In summation, community board initiation of leases subject to Board of Estimate approval would appear to be feasible. A formal requirement for community board review of leases with respect to local needs and site location would be consistent with current practice. However, local board veto would substantially impair the city's ability to carry out city-wide policies.



Leaving final responsibility with the Board of Estimate represents a middle way, a check upon the potential insularity of the Department of Real Estate and a balance of community interests when they conflict. It combines professional judgment with a forum for community opinion. The *Draft of Proposed Charter for the City of New York* by the New York State Commission on Governmental Operations of the City of New York (1960 Moore Commission), a document which drastically reduced the powers of the Board of Estimate (Development Board), retained control of city property in its hands.

b) Should the Board have the responsibility for the disposal of city property?

Closely related to the power to lease out property of the city and designate property for city use, the Charter also states that no real property of the city may be disposed of except with the approval of the Board of Estimate unless the power is expressly vested in another agency. (Charter, Section 384a & b)

The Board has expressly set up the Committee for Acquisition and Disposition, (Rules of Procedure, No. 19 b.) composed of the three city-wide elected officials, to be in charge of these matters and to place the request on the calendar. In practice though, it is the Department of Real Estate which determines whether or not a piece of property should be sold or auctioner and sets a base price. The Department's recommendation is then passed on to the Committee, which generally accepts it without alteration and then submits it to the Board Secretary for calendaring.

Item Number 77 (Calendar D) is an example of the sale of several parcels of land at public auction. The item had been laid over twice previously because a city agency

CALENDAR D—March 11, 1971

## No. 77

R-11993

RESOLUTIONS (2) for consideration, recommended by the Commissioner of Real Estate, as follows (Committee Cal. No. 2):

(a) Authorizing the sale at public auction of eleven parcels of land in the Borough of Manhattan at the minimum prices enumerated in the resolution.

(b) Authorizing the payment of brokers commissions on those parcels sold for $1,000 or more.

REPORT of the Commissioner of Real Estate, dated January 11, 1971, stating that the total assessed valuation of these parcels is $278,000. The minimum or upset prices total $204,500.

No City Agency has indicated a need for the parcels.

On January 19, 1971 (Cal. No. 45) the Committee laid this matter over to its meeting of February 2, 1971, and on the latter date (Cal. No. 5) to this meeting.

For consideration—two resolutions.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

indicated that it might have a use for one or more parcels in the group to be sold. However, on this occasion, the third time the matter was brought up, it was passed unanimously. This once again demonstrates how most of the controversy inherent in an item is resolved by internal processes before the matter is actually voted upon by the Board.

The process of acquiring real property for public purposes may be even more complex the Board is placed in the position of tacitly approving or disapproving agency activities proposed for the site by determining whether or not the site is to be acquired. Urban renewal projects are often examples of this point. As in Item Number 14 (Calendar C), the Housing and Development Administration may propose acquisition of a site which the agency considers suitable for urban renewal. This step is taken to implement an urban renewal plan previously approved by the Board of Estimate. Before the Board acts it considers the recommendation of the City Planning Commission, the local Community Board, and other agencies and/or citizens with an interest in the matter. In this particular instance, the Board heard statements from the Economic Development Administration, the Community Board, several block associations, the Urban Task Force, and property owners in the area, as well as some other local civic organizations. Obviously the Board's decision (in this instance approval by a vote of 22 - 0) may well have been determined as much by its opinion of the proposed use of the site as by the existing condition of the property. Thus, the existence of the Board forces city agencies to make decisions which are compatible with the Borough Presidents' more parochial points of view.

CALENDAR C—February 11, 1971

## No. 14

R-4218, 4232

PUBLIC HEARING in the matter of a communication dated January 13, 1971, from the Administrator, Housing and Development Administration, submitting proposed resolutions and report of the City Planning Commission (CP-21415, dated January 11, 1971), relative to the Gowanus Industrial Urban Renewal Project within the area bounded generally by First Street, Fourth Avenue, Seventh Street, Second Avenue, etc., Borough of Brooklyn.

ADDITIONAL COMMUNICATION dated January 14, 1971, from the Administrator, Housing and Development Administration, submitting the Urban Renewal Plan for the proposed Gowanus Industrial Urban Renewal Project, Borough of Brooklyn.

This matter has been duly advertised in accordance with a resolution adopted by the Board on January 28, 1971 (Cal. No. 100).

REPORT of the City Planning Commission (CP-21415, dated January 11, 1971),





stating that the Gowanus Industrial Development Plan provides for the renewal of a deteriorating area, located in the Gowanus Canal vicinity, as an urban renewal project.

The Plan is intended "to minimize the non-conformance of land use by the removal of substandard and deteriorating non-industrial structures from a zoned industrial area; the elimination of impediments to land disposition and development; the creation of job opportunities for residents of nearby neighborhoods; the provision of a relocation resource for industries displaced from urban renewal areas; and the establishment of appropriate industrial land uses to strengthen and support the area's industrial character."

The proposed Renewal Area is bounded by 1st Street, 4th Avenue, 7th Street, 3rd Avenue, 16th Street, Hamilton Avenue, Smith Street, 4th Street and Bond Street, Borough of Brooklyn.

Redevelopment of the area is proposed to be advanced in stages. The following parcels are proposed to be acquired in the First Stage:

| Block | Lot |
|---|---|
| 967 | 24 |
| 972 | 1 |
| 1025 | 1 |
| | 16 |
| | 26 |
| | 52 |
| | 43 |
| | 46 |
| | 47 |
| | 49 |
| 1038 | 1 |
| | 6 |
| | 35 |
| | 34 |
| | 33 |
| 1031 | 1 |
| | 9 |
| | 11 |
| | 41 |
| | 52 |
| | 53 |
| | 54 |
| | 62 |
| | 67 |
| | 70 |
| | 71 |
| | 72 |
| | 75 |
| | 78 |

| Block | Lot |
|---|---|
| | 79 |
| | 80 |
| | 82 |

The following parcels within the boundaries of the renewal area are designated Q parcels, not proposed to be acquired; but subject to acquisition in the event that they do not comply with existing laws, codes, ordinances and regulations of the City and State of New York.

| Block | Lot |
|---|---|
| 1020 | 1 |
| 1007 | 1, 118, 220, 172, 219 |
| 979 | 31 |
| 967 | 1 |
| 968A | 1 |
| 980 | 95 |
| 990 | 69, 65, 50, 138, 151, 153, 160, 1, 16 |

It is understood that before any additional property, not in Stage I, is to be acquired, amendments to the Plan to provide for such acquisition will be submitted to the City Planning Commission for approval.

The Plan indicates the elimination of a number of streets and states that streets are to be demapped as required. Such street closings will require a change in the City Map subject to approval by the City Planning Commission and Board of Estimate after public hearings in accordance with City Charter requirements.

Public Hearing.

Speakers in favor of the plan included representatives of the Economic Development Administration, Community Planning Board No. 6, Second Place Block Association, Nelson Street Block Association, the Urban Task Force, and property owners in the area.

The president of the South Brooklyn Development Council spoke in favor of the plan, but recommended the exclusion of certain properties and a traffic study to route traffic away from the residential area. The representative of the Cobble Hill Association endorsed the Council's position.

Owners of certain parcels in the area opposed the taking of their property.

Consideration

The City Planning Commission has carefully reviewed this Plan and given thorough consideration to the views expressed at the Public Hearing. While we consider this Plan to be generally appropriate for the revitalization of an industrial area to provide for suitable development which would increase urgently needed job opportunities in this section of Brooklyn, we consider that the Plan should be modified by the exclusion of certain areas.

The City Planning Commission, therefore, hereby modifies the Plan by eliminating the following areas for the reasons noted.

The area bounded by 4th Street, Bond Street, Gowanus Canal, West 9th Street and Smith Street is eliminated because this site is being considered as the site for a high school. The site is zoned for manufacturing. In fact, construction has already started on





part of the site. We make no determination at this time whether this site should be used as a school or for manufacturing purposes. Our action should not be construed as implying support for the school or for the existing manufacturing plans.

The following areas are excluded because they are largely occupied by residential development in satisfactory condition:

(1) The blocks bounded by 2nd Avenue, 8th Street, 3rd Avenue and Hamilton Avenue;

(2) The portion of the block between 6th and 7th Streets and between 3rd and 4th Avenues, easterly from the east line of Lots 1 and 5, to 4th Avenue. The excluded lots are: Block 992, Lots 21, 23, 24, 26, 27, 29, 30, 32, 33, 34, 36, 37, 38, 40, 42, 47, 48, 49, 50, 51, 52 and 53.

Findings and Approval

The City Planning Commission finds that the proposed Urban Renewal Plan, as modified, is an appropriate plan for the area involved.

The City Planning Commission hereby certifies that the Urban Renewal Plan for the Gowanus Industrial Development Area, as modified complies with the provisions of Section 502, Article 15 of the General Municipal Law of the State of New York and conforms to the Comprehensive Community Plan for the development of the municipality as a whole and is consistent with local objectives.

The Commission hereby certifies that the Urban Renewal Plan, as modified, is in conformity with the findings and designation of the Gowanus Urban Renewal Area under Section 504, Article 15 of the General Municipal Law as adopted by the City Planning Commission on January 11, 1971 (CP-21414).

The City Planning Commission hereby certifies its unqualified approval of the Urban Renewal Plan for the Gowanus Urban Renewal Area, as modified, pursuant to Section 505, Article 15 of the General Municipal Law of the State of New York.

Close the hearing.

Resolution for adoption approving the Urban Renewal Plan, etc.

Above all, in matters concerning the disposal of property, the Board serves as the protector of the city-wide interests by lifting such matters above the neighborhood interests when necessary for the welfare of the city as a whole. If matters such as these were finally decided at the local level, it is difficult to see how city-wide interests could be given just consideration. It is predictable that while many people may recognize the need for new sewage treatment plants or new sanitation garages, the neighborhoods which are served by the facilities would, conceivably, refuse to provide the property. Nearly everyone would prefer to site such facilities several blocks away from his home, perhaps just across the line into the next community. It is therefore essential that a centralized body be empowered to resolve these matters from a city-wide overview.

The Board of Estimate has retained the power to acquire and dispose of real property for the city throughout its history, periodic power shifts and charter revisions notwithstanding. The reason for this lies in the unique nature of the Board's perspective, which is derived from its composition. With the Mayor, the President of the City Council, and the Comptroller (the members of the Committee for Acquisition and Disposition) each having four votes in the Board, they provide the balance of legislative and executive weight for city-wide constituencies. With the votes of the Borough Presidents representing the individual borough and community constituencies, the distribution is well balanced. No other body in the city can claim this perspective.





c) Should the power to grant franchises and revocable consents be exclusive with the Board?

The Board of Estimate's control over the granting of franchises stems from the jurisdiction over the area on, above, and below all city streets and thoroughfares. Private bus firms must obtain franchises in order to operate, and the Transit Authority must receive Board approval for any changes in bus or subway routes. Companies supplying refrigeration or steam must obtain the permission of the Board to use certain conduits beneath the streets, as must any potential user of such conduits, pipelines or tunnels, including CATV concerns. No restaurant may open a sidewalk cafe without the Board's revocable consent. (Charter, Section 362)

The Board's ruling on franchises and revocable consents is vital, but not final; no franchise or consent can become effective until it has received the Mayor's signature.* The focus of the entire process is the Bureau of Franchises, the Director of which is an appointee of the Board. All petitions for franchises and requests for consents are routed to his office, at which point he sends the request to all city agencies which might have an interest in it for their comments or objections (these being advisory only). After receiving their replies, he makes his own evaluation and determines a fee, which is ordinarily a standard one. The request, with his recommendation and possible modifications, then comes before the Board and is generally approved, though delays are not uncommon. Petitions are rarely approved without the Director of Franchie's recom-

* Franchises must be approved by a 3/4 vote and revocable consents, by a majority. (Charter, Section 372) There is at present no provision in the Charter to override the Mayor's veto. (Charter, Section 373)

mendation, although a petitioner does have the right to put his request directly on the Board's calendar. In the calendars under study, however, there were no examples of this, since there is an informal recognition that the Director's opinion is too influential to be disregarded.

The operations of private bus companies are very much in the public interest, so the Board not only approves their franchises, but also consents to their routes and rate structures. Item Number 127 (Calendar A) is a request by such a firm for approval of an increase in fares. The Board must balance the public's desire for the lowest possible rates with the company's ability to each a reasonable rate of return. The solvency of the company is in everybody's interest. This particular item is not before the Board for a final decision, but for the fixing of a date for a public hearing. Final decision must take into account a thorough evaluation of the company's financial situation, along with the expressed desires of interested citizens.

Item Number 124 (Calendar A) is a representative petition for a revocable consent to continue using a tunnel under city streets. The Bureau of Franchises has solicited the opinions of all affected city agencies and determined the annual compensation to be paid by the petitioner. This action accentuates the Bureau's dual role as a clearing house for all relevant opinions in the city government and as an independent judge of the proper financial compensation. The item in question is technical and of a limited interest, but the security of city property and the possibility of financial abuse requires a body to review its decision, which the Board does.

Petitions for the construction of sidewalk cafes are in the same category. A generally innocuous item, there are still the matters of pedestrian safety and convenience, as





## No. 124

R-9118

RESOLUTION for adoption, recommended by the Director of Franchises, granting consent to J. W. Mays, Inc. to continue to maintain and use a tunnel under and across Livingston Street between Bond Street and Elm Place, Borough of Brooklyn.

On December 3, 1970 (Cal. No. 134) this matter was referred to the Bureau of Franchises.

REPORT of the Director of Franchises dated January 4, 1971 stating that the tunnel has been in existence for over sixty years. The President of the Borough of Brooklyn, the Department of Water Resources, Bureau of Water Supply and Bureau of Water Pollution Control, the Department of Highways and the Bureau of Gas and Electricity state that they have no objections to the renewal of the consent.

The Office of the Comptroller of The City of New York advises that compensation at the rate of $833 per annum has been paid to June 30, 1971 and that security in the sum of $2,500 is maintained on deposit in his office.

The Bureau of Franchises has no objections to offer, and as the administrative departments of City government having jurisdiction find none, it is recommended that the consent be granted only during the pleasure of the Board, revocable at any time, but in no event to extend beyond November 10, 1977.

Compensation—$1,200 per annum.

Security Deposit—$2,500.

Insurance—The company shall maintain insurance in the minimum amounts of $100,000/$300,000 for bodily injury and $25,000 for property damage.

Resolution for adoption.

CALENDAR A—January 14, 1971

## No. 127

R-4158, 4137

RESOLUTION for adoption, recommended by the Director of Franchises, fixing February 11, 1971 as the date for a public hearing on the petition of Carey Transportation, Inc. dated December 4, 1970 for a modification of its franchise contract dated July 16, 1959, as amended, so as to authorize said Company to establish and collect a fare of $2.00 on Routes MQ-1 and Q-53.

On December 17, 1970 (Cal. No. 110), this matter was referred to the Bureau of Franchises and the Transportation Administration.

REPORT of the Director of Franchises, dated January 7, 1971, stating that Carey Transportation, Inc. by petition dated December 4, 1970 requested a modification of its franchise contract dated July 16, 1959, as amended, so as to authorize the Company to establish and collect a fare of $2.00 on Route MQ-1 (between the Grand Central Terminal stop and East Side Airlines Terminal, on the one hand, and, on the other, LaGuardia Airport) and on Route Q-53 (between LaGuardia Airport and Kennedy International Airport).

The Company is presently authorized to charge a fare of $1.50 on Route MQ-1 and a fare of $1.35 on Route Q-53.

In order to progress the processing of this petition, it is recommended that the Board of Estimate fix a date for a public hearing on the petition, at which citizens shall be entitled to appear and be heard.

REPORT from the Transportation Administration dated December 31, 1970 stating that the fares charged on mass transit systems should be kept at the lowest possible level. The report further states that unless the review of this petition by the Director of Franchises clearly establishes by financial records that an increase in fares is warranted, the Transportation Administration opposes this petition.

Resolution for adoption fixing February 11, 1971 as the date for a public hearing on the petition.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

well as community tranquility, in addition to the setting of fees which merit attention.

The aforementioned items are characteristic of those which fall under the Board's franchise jurisdiction. This jurisdiction could be reallocated, theoretically, to the Mayor's office, or to some local body such as the Community Board. Shifting the Bureau of Franchises to the Mayor's office would involve a minimum of administrative disruption and might increase opportunities for inter-agency planning; however, it would further remove franchise questions from public surveillance. The Bureau could still hold public hearings, but without the adversary posture that characterizes the Board of Estimate, the public would have less of an opportunity to participate in the actual decision-making.

The other alternative repository of these powers, the Community Boards, presents problems of a different nature. Bus companies, for instance, often operate in several districts; regulation of their routes and fares is, thus, an inherently inter-community problem. The companies naturally prefer, moreover, to concentrate their operations in the more affluent areas, a situation which the Community Boards of the neglected areas might find themselves powerless to correct.

In the matter of revocable consents, the local boards would have to decide upon requests like that of J. W. Mays Inc. for use of an underground tunnel. In order to judge the feasibility of such a request and set a just fee, the Board would require the services of a professional staff. Such a provision is not impossible, but the multiplication of such staff by all the Community Boards in the city would entail a considerable addition in expense over the present Bureau of Franchises. A natural response would

be a city-wide staff to serve all the Community Boards, but this would be the same as centralization. Community Boards could probably handle the granting of consents to their own satisfaction, although a wide fluctuation in the fees paid might result. It must be remembered that these matters affect the public purse and that it would be impossible to conceive of a non-uniform standard in these cases. If there was a difference in standards, franchise holders could claim that their fee was set in an arbitrary and capricious manner by the local body, and would tend to subject each rate setting to litigation.

The Board of Estimate did not gain sway over franchises by accident. It was given jurisdiction by the State Legislature in 1905 because the Board of Aldermen was abusing its control over such matters. The Board was deemed more cognizant of the general interest and less amenable to narrow pressures. The Board has the Bureau of Franchises for technical matters, a representative structure for resolution of inter-community differences, and a public hearing procedure open to any individual or community group. It also possesses the intangible advantage of almost 70 years experience with franchise questions, an attribute which would be diminished by diffusing its powers throughout the city.

d) Should the Board be able to grant relief from public letting in purchases and/or contracts for services?

Under present statutes, all city agencies are required to publicly advertise their intention to purchase items or to let contracts. (Charter, Section 344.2) Sealed bids are then submitted by prospective contractors and suppliers, and the city is required to accept the lowest bid unless the Board of Estimate, by a 2/3 vote, authorizes acceptance



of a bid which is not the lowest. (Charter, Section 343.a & b) In essence, relief from the procedures of public letting is merely the authorization to make a purchase or sign a contract which may or may not be at the lowest price. Charter provisions relating to public letting and advertising contracts are designed to reduce the cost of city government by fostering competition in the awarding of city business. Public bidding and advertising are, however, time consuming and expensive procedures, and occasionally it is more efficient to make purchases or contract for services without public letting.

Generally, relief from public letting is granted when the city agency knows in advance that there is only one firm which is capable of supplying the desired material or performing the required service, when there is an overrun of more than 5% on publicly let contracts, or when a unique kind of equipment is required in order for the new purchase to be compatible with existing facilities. In any event, all relief from public letting must be investigated by the Bureau of the Budget and, in some instances, by the Comptroller to determine that the exemption is, in fact, in the public interest.

Item Number 157 (Calendar A) is typical of the matters coming before the Board which concern relief from public letting. However, the initial question to be answered is whether or not there should ever be relief from public letting. Clearly, this must be answered in the affirmative in the complex technological and scientific environment of today. Such relief must, however, be dependent on predominant evidence of special circumstances and the absence of viable alternatives. This finding will require investigatory and technical expertise in whatever agency has the responsibility. The opportunity for abuse has been well-recognized in the past.

CALENDAR A—January 14, 1971

## No. 157

R-4140

RESOLUTION for adoption recommended by the Director of the Budget, approving a request by the Commissioner of Purchase to purchase without public letting 10 model 41 cash registers with self checking code and paper tape attachment from the National Cash Register Company for use of the Parking Violations Bureau of the Department of Traffic for a sum not to exceed $89,000 chargeable to Code 61-1485-11-52.

On December 17, 1970 (Cal. No. 151), this matter was referred to the Director of the Budget.

REPORT of the Director of the Budget dated December 24, 1970, stating that the staff of the Parking Violations Bureau has evaluated cash register equipment from various companies. The study indicated that the NCR cash register #41 was dependable, required little service, was supported by systems engineers and would best serve the needs of the Parking Violations Bureau. The use of the self-checking digit verifier device will enable the Parking Violations bureau to eliminate errors in the processing of summons numbers. The paper tape device will permit the capture of the data for subsequent entry into the data processing system without the keypunching of punched cards. The estimated savings from the use of the paper tape for cashiering operations are $37,000 annually while the savings from the elimination of error look-ups may save up to $30,000 per year.

In addition, the NCR 41 cash register is a flat feed machine which appears to be preferable for PVB operations.

The Parking Violations Bureau has been renting NCR 41 cash registers without the devices for the past 6 months and the equipment has proven to be satisfactory and reliable. NCR is ready to build to PVB specifications NCR 41 cash registers which will include the self-checking feature and ability to use the paper tape equipment. This equipment is available only from the NCR Company.

Resolution for adoption.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

The terms and conditions set by the Board for the expenditure of city funds have a direct bearing on public letting procedures. Many small firms are effectively excluded from bidding on city contracts because they cannot provide the security necessary to guarantee that the work will be successfully completed. Such performance bonding is one of the terms and conditions set by the Board.

Administrative decentralization of these responsibilities of the Board of Estimate would require substantial expert staff at the decentralized level. There would, however, still need to be a central agency to establish guidelines and to monitor the local agencies adherence to such rules. At present, recommendation from the Bureau of the Budget is required on most items and, also, the Comptroller's office is often asked for a report.

Political decentralization would tend to shift both purpose and personnel. Even if the substance of a purchase or contract were determined centrally, the performer of the contract would be different. The priorities and concerns of local governmental authorities will differ from those of a city-wide body, but whether the priority is better delivery of services or more jobs for community residents will depend on who controls the local government. The current rules governing the qualifications of the contractors (lowest bidder, bonding, insurance, unionized work force, etc.) leave virtually no flexibility on any level. If the power to grant relief from public letting is ceded to local governmental units, the process can be used to circumvent any city-wide guidelines. In effect, such contracts must become the patronage of local governmental structures.

Permitting local initiative in exempting contracts from public letting would create substantial city-wide problems. As previously noted, local governmental units will tend

to make city contracts a source of patronage. Consequently, a service like filling potholes, which must be replicated in every area of the city, will not be performed on a city-wide basis. Pressures will be created for local governmental units to award pothole filling contracts to neighborhood construction firms, regardles of whether they are the least expensive. However, even without permitting local governmental units to exempt contracts from public letting, problems will arise merely in defining the scope of work. If a different pothole filling contract is let for each neighborhood, to enable adequate monitoring of the work and to prevent the contractor from avoiding accountability by claiming more urgent work is required in a different district, one might find, at a minimum, that the economies of scale would be sacrified. It is rather unlikely that the pothole filling requirements of all the city's neighborhoods could be subdivided into economically efficient units. One neighborhood might have enough potholes to require one crew working full-time on the problem, but two other districts might need a crew only half the time. If these two districts are adjacent, there would be fewer problems than if one was in the far reaches of Queens while the other was in the Northwest Bronx. Two half-time pothole filling contracts are obviously more expensive than one full-time. Some districts will have heavier traffic or older roadways than others, thereby creating problems in equitably allocating resources. In addition, the local governmental units could use the power to exempt (or not exempt) contracts for filling potholes as a weapon (i.e., preventing the filling of potholes until express buses are removed from their streets or, deliberately allowing the roads to deteriorate as a means of slowing down traffic on a street.)



Local review of exemptions from public bidding would create virtually no problems. The local governmental units would serve as a watchdog over the exemptions of the central government. Mandating local review of exemptions from public bidding would be an asset in terms of forcing the central government to disseminate information. Local review would expose the decision-making process to greater local scrutiny.

Local veto of exemptions from public bidding would probably, like local review, create few problems and give the neighborhoods some power with respect to increasing the efficiency of government. However, local veto could also be used as a weapon if the exemption from public letting could be refused until a local contractor gets the job. In practice, though, it is highly unlikely that the governmental units would ever object to an exemption from public bidding because it would mean delay in the performance of a service or the acquisition of an item. Governments usually act slowly, so it is unlikely that a responsive local governmental body would act in such a way as to further delay the performance of a service or the delivery of an item desired by their constituents, even if it meant saving money.

Exempting contracts from public letting is, and should be, a rarely used power. Decentralizing the power would tend to make the process of letting contracts chaotic and inefficient.

e) Should the Board have the power to make decisions concerning public improvements in the city?

The Board of Estimate is empowered to undertake improvements in the city under the following New York City Charter provision, "Nothing (contained in this sec-

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

tion) shall impair or diminish the power of the city to install, construct, reconstruct, repave or repair sidewalks, or to fence vacant lots or to fill sunken lots, or to enter into contracts with the owners of premises abutting on streets for such installation, construction, reconstruction, repaving or repair of sidewalks, or fencing of vacant lots or filling of sunken lots, upon such terms and conditions as may be approved by the Board of Estimate." (Charter, Section 230 e)

The Board of Estimate does not initiate items, but rather decides those matters which have been referred to it by various agencies and/or personages. It does not, for example, directly order any department to repair a sidewalk or fill a pothole, etc. Instead, these requests are brought before the Board for approval. But they do not come before the Board as isolated items; rather these requests appear in the form of a contract, a line proposal in the budget or a change in the city map.

In the analysis of the Board calendars, there were very few items which could be considered purely under the heading of public improvements. Indeed, even the following example, Item Number 184 (Calendar C), could be considered to fall under the Board's power to make changes in the city map. Although few of these isolated items exist, the Board's power to make public improvements is a necessity, since it is inevitably linked to its power to make changes in the city map.

Neither political nor administrative decentralization can effectively deal with the interlocking nature of the Board of Estimate's powers. There is little argument that potholes are more readily noticed by local residents than by a central administration. It is less easily understood and far more complicated to remove the hazard of an excava-



CALENDAR C—February 11, 1971

## No. 184

R-9317

COMMUNICATION dated February 4, 1971, from the Administrator, Housing and Development Administration, transmitting proposed resolution authorizing the filing of an application with the Federal Department of Housing and Urban Development for a Third Amendatory Demolition Grant.

The Third Amendatory Demolition Grant is intended to upgrade the quality of the demolition areas by continuing the removal of blighted and decaying buildings to create an environment which is conducive to promoting private owners to upgrade their own facilities. The Amendatory Grant is part of an ongoing process started in 1966 with our first Federal Grant and continuing up until the present with the First and Second Amendatory Grants.

On December 19, 1968 (Cal. No. 145), the Board of Estimate approved a proposed amendatory contract in connection with the aforesaid matter.

For consideration.

tion in District A, which endangers buildings in District B, particularly if the only contractor available has his office in District C and employs primarily residents of Districts D & E.

The need for an efficient response system is an unargued need; the possibilities of decentralizing the power to undertake public improvements are, at best, doubtful.

f) Should the Board of Estimate have the power to make zoning and street map changes and to approve housing and urban renewal projects?

Of all the powers granted to the Board of Estimate, the power to make changes in the city map (Section 199 b,c) and to decide on zoning regulations (Section 200 2,3) is secondary in importance only to its influence in the budget process. Changes in the city map which mainly concern use of streets and zoning must be examined by the City Planning Commission, although the final decision rests in the Board.

The closing or alteration of streets creates controversy because it affects availability of parking, dislocates existing traffic patterns, and alters the width of sidewalks.

For example, businessmen's concern with easy access to their place of business often conflicts with local residents' concerns for pedestrian safety, easy parking, and safe places for children. A proposal to close a street on which commercial properties abut would raise protests from the businessmen because access to their stores would be more difficult and pick-ups and deliveries less convenient. Similarly, community residents would probably protest the increased traffic on the nearby residential streets caused by the closing. Sidewalk width is also a matter of concern



because it affects the availability of parking space or standing room for cars.

Zoning, however, is far more controversial than street use. Local communities agitate for vacant land to be rezoned as parks, schools, or other public facilities which produce no revenue. On the other hand, public officials responsible for the fiscal solvency of the city are interested in maintaining and developing the tax base. In addition, zoning controversies have an aesthetic component. Residents in areas of one-family houses resist high-rise construction and the encroachment of commercial zoning which brings floods of strangers into the neighborhood, increases the traffic on their residential streets, and monopolizes the already scarce parking space. Needless to say, such arguments are also often used for less substantive reasons.

These street use and zoning decisions are made by the Board of Estimate because, although each specific decision affects a relatively small geographic area, they all have city or at least borough-wide implications.

In reviewing street closings, the Board has to determine whether the area to be enclosed is essential for frontage or public purposes. Item Number 13 (Calendar A) was a communication from the Borough President of Brooklyn requesting the closing of four streets to incorporate them into a site for Northeast Brooklyn High School. The City Planning Commission had stated that the street areas to be closed were not necessary for street purposes, and the Board of Estimate subsequently approved this item unanimously. While recommending the street closings, the City Planning Commission also stated the need to modify the lines and grades (Item Number 40, Calendar A) of the street system encompassing that area. They also recommended widening a nearby street by ten feet in order to

CALENDAR A—January 14, 1971

## No. 13

R-6486, 4032

PUBLIC HEARING in the matter of a communication dated August 27, 1969 from the President of the Borough of Brooklyn submitting a map (V-2009) showing the discontinuance and closing of Florence Street and La Grange Street from Grand Street to Maujer Street and of Maujer Street and Ten Eyck Street from Bushwick Avenue to Waterbury Street, Borough of Brooklyn.

On September 18, 1969 (Cal. No. 190) this matter was referred to the City Planning Commission and the Director of the Budget.

This matter has been duly advertised in accordance with a resolution adopted by the Board on December 17, 1970 (Cal. No. 176).

REPORT of the City Planning Commission (CP-20927, dated November 5, 1969) stating that the street areas to be closed are apparently not essential for street purposes and it is proposed that they be incorporated into the site for the Northeast Brooklyn High School in the Williamsburg section of the Borough.

The site area is bounded by Grand Street, Waterbury Street, Stagg Street and Bushwick Avenue and title to the area was acquired by the City on June 23, 1969, including the streets to be closed.

The streets under consideration are fully improved and in use.

Approval of the closing map under consideration is predicated upon the prior approval of the related map change (CP-20928) referred on September 18, 1969 (Cal. No. 191) and which is the subject of a separate favorable report dated November 5, 1969 which states that the streets under consideration are not essential for frontage or any public purpose and their elimination and closing appears to be unobjectionable.

After approval of the related map change (CP-20928), the closing map now under consideration may be adopted. The resolution discontinuing and closing the streets under consideration should include the adoption of the closing map and should specify the date upon which these streets shall become and be closed. After the date fixed for the discontinuing and closing, the closed street areas may be assigned by the Board to the Board of Education upon the determination that they are no longer required for street purposes.

The matter was the subject of a public hearing duly held by the Commission on October 22, 1969 (Cal. No. 41). No opposition developed and the hearing was closed.

The matter was considered further at a meeting held by the Commission on November 5, 1969 (Cal. No. 28) at which time it was determined that the map under consideration is an element in the formal process of discontinuing and closing portions of streets no longer required for street purposes.

The City Planning Commission recommends that the closing map under consideration be approved after the adoption of the related map change (CP-20928) referred on September 18, 1969 (Cal. No. 191).

REPORT of the Director of the Budget, dated December 10, 1970, recommending approval after a public hearing.

Close the hearing.

Resolution approving the closing map.

(See Cal. No. 40).



CALENDAR A—January 14, 1971

## No. 40

R-6487

IN THE MATTER of a resolution, recommended by the City Planning Commission approving a map submitted by the President of the Borough of Brooklyn, which provides for modifying the lines and grades of the street system within the territory bounded by Grand Street, Morgan Avenue, Scholes Street, Bushwick Avenue, Maujer Street, and Humboldt Street, including the elimination of several streets therein, Borough of Brooklyn.

On September 18, 1969 (Cal. No. 191) this matter was referred to the City Planning Commission.

REPORT of the City Planning Commission (CP-20928, dated November 5, 1969) stating that the map relates to a five block area in the Williamsburg section of the Borough and provides primarily for elimination of the lines of Florence Street and La Grange Street from Grand Street to Maujer Street, and of Maujer Street and Ten Eyck Street from Bushwick Avenue to Waterbury Street, in order to permit the consolidation of the site for the Northeast Brooklyn High School.

The map further provides for a 10-foot widening of the west side of Waterbury Street between Grand Street and Stagg Street and of Grand Street to a point 47.5 feet east of Bushwick Avenue. These widenings are designed to improve vehicular and pedestrian traffic circulation around the school.

The map also provides for adjustments in the grades which are occasioned by the street line changes. In addition the map provides for a number of grade changes in the peripheral streets in order to conform more closely with existing conditions. These grade modifications will not adversely affect sewerage and surface drainage requirements.

The four streets which are proposed to be eliminated are in City ownership and are not required for frontage or any public purpose. Florence Street and La Grange Street are in use at their mapped widths of 40 feet. Ten Eyck Street and Maujer Street are in use at their mapped widths of 50 feet and 60 feet, respectively.

The City vested title to the school site on June 23, 1969.

The effective closing of the streets proposed to be eliminated will involve the adoption by the Board of a map submitted for this purpose. Such a map (CP-20927) was referred to the City Planning Commission on September 18, 1969 (Cal. No. 190) and is the subject of a separate favorable report dated November 5, 1969.

The map change was the subject of a public hearing duly held on October 22, 1969 (Cal. No. 42). No opposition developed and the hearing was closed.

The matter was considered further at a meeting held by the Commission on November 5, 1969 (Cal. No. 29), at which time it was determined that the map change, designed to eliminate several streets to provide a site for the Northeast Brooklyn High School, is an acceptable modification of the City Map.

The City Planning Commission recommends that the map change under consideration be approved.

On December 17, 1970 (Cal. No. 177), the matter was laid over to this meeting.

For consideration—resolution approving the map change.

(See Cal. No. 13.)

improve vehicular and pedestrian traffic circulation around the school. These changes were also approved by the Board unanimously.

Under a system of administrative decentralization, the engineering services necessary to make such a determination would have had to be available to the local government unit. In the event that such a street closing would, in fact, have an adverse effect on the sewage and surface drainage of the area, the remedy would doubtless have severe budgetary implications. (In this case, the City Planning Commission maintained that the grade modifications would not affect surface and sewage drainage).

Under a system of political decentralization, such a street closing would cause major problems if the modernization of schools or street lighting were competing for the funds needed to relocate the sewers and construct adequate drainage facilities. However, in the event that there are limits on the degree of budget flexibility available to the local governmental unit, such a street closing could be handled on the local level (as long as it did not disrupt the flow of traffic throughout a wider area or the entire borough). It might be possible under a system of political decentralization to designate two types of streets, local and non-local. The decentralized governmental units would be responsible for local streets, while control of major arteries would remain with a borough-wide or city-wide authority.

Another example is that of a street closing necessitated by the expansion of a voluntary hospital. In such a situation there already exists a certain degree of local initiative. At present, if a community institution such as a voluntary hospital feels that enlarging its facilities is necessary to cope with an increased service demand, it applies to the City Planning Commission for the discontinuance and



closing of the needed street. Concurrently the hospital apprises the Community Board of its reasons for the request. Eventually recommendations from the Community Board and Planning Commission will be voted on by the Board of Estimate.

What must be pointed out is the difference between community and institutional or private initiation. An example of community initiation might be the request for the demapping of a street for playground purposes. In practical terms this would probably be addressed initially to the Borough President. The formal process is identical to the previous examples.

At present, the majority of locally initiated terms stem from voluntary and private institutions, despite the fact that their plans might conflict with the wishes of the surrounding community. For these street closing matters, the institutions view the Community Board primarily as a part of the review process which ultimately culminates in a decision by the Board of Estimate.

Any recommendation made to the City Planning Commission concerning street closings will automatically be referred to the Community Board for review and comment. Although the Board of Estimate receives reports from the Community Boards on these matters, this is not required by the Charter. The Charter merely asks that the Community Board make recommendations to city agencies and that these recommendations be noted in the agency reports. The Charter might mandate that Community Boards make recommendations to the City Planning Commission and the Board of Estimate on matters of this nature.

The existence of local veto power has always been publicly denied, yet examples can easily be cited that evidence

some degree of local veto. Local community pressure on the Mayor, Board of Estimate or City Planning Commission has halted projects which served city-wide objectives, (e.g., a cross-borough expressway, certain scatter-site housing, a frequently relocated public high school). Denial, by local veto, of a street closing may adversely affect the availability of services to neighboring districts, and even to the borough or city as an entirety. No community particularly desires power company substations or sanitation garages, yet without such facilities the operations of city-wide agencies would be impossible.

Local responsibility must also be examined in terms of economic cost as opposed to social cost of a particular project. In part, judgments must be based on the comparative costs of one site or another. This is particularly true when the project is sponsored by a voluntary or non-profit agency. Cost-of-money, debt service, and viable tax base are not as persuasive to local governmental agencies as they are to a city-wide body.

Another kind of issue (Item Number 41, Calendar C) which the Board of Estimate was asked to decide was whether a C 1-2 area (Local Retail District) should be established within an existing R 5 (General Residential District). The commercial developer had originally asked for a C-2 zoning resolution because he thought that he could not comply with the accessory off-street parking regulations required by the zoning ordinances. According to the zoning laws, a C 1 or C 2 commercial district within an R 5 residential district must provide access to off-street parking for 42.5% of the units in the building. However, off-street parking requirements are determined by the residential district (R 5) within which the commercial district is mapped. For example, had the commercial district been





## No. 41

R-4240

**IN THE MATTER** of an amendment of the zoning map (section 10c) establishing within an existing R5 district, a C1-2 district bounded by Roosevelt Avenue, a line passing through a point on Roosevelt Avenue distant 228.5 feet easterly of 155th Street and at an angle of 73 degrees 25 minutes with Roosevelt Avenue, a line at right angles to the last mentioned line at a point 155.8 feet southerly of Roosevelt Avenue, and a line 100 feet east of 155th Street, Borough of Queens, as shown on a diagram dated December 9, 1970.

**REPORT** of the City Planning Commission (CP-21434, dated January 20, 1971), stating that this rezoning was requested by both the owner and the contract purchaser of the affected property. The original request for a C2 District was modified by the Commission.

On December 9, 1970 (Cal. No. 13), the City Planning Commission scheduled a Public Hearing on the proposed change. The hearing was duly held on January 6, 1971 (Cal. No. 47). There were no appearances and the hearing was closed.

The Commission is in receipt of a communication from a local civic organization in opposition to the proposed amendment.

The applicant requested a change to a C2-2 District contending that he could not meet the accessory parking requirements for a C1-2 District. However, the required accessory parking requirements are the same for a C1-2 District, as proposed by the Commission, as they are for a C2-2 District.

The affected property is presently developed with a two story real estate and Insurance agency, which is to be demolished and replaced by a new commercial building.

The applicant has agreed to set back the new building from Roosevelt Avenue in line with the front wall of a proposed library adjoining the site on the west and to demolish the existing building prior to the start of new construction.

The rezoning, as proposed by the Commission, constitutes a minor extension of an existing C1-2 District which will provide a more logical zoning pattern for the area without any adverse effect on surrounding properties.

The Commission therefore considered the rezoning appropriate and adopted a resolution, which was filed with the Secretary of the Board of Estimate, pursuant to Section 200 of the New York City Charter, on January 20, 1971.

The Board of Estimate may approve, disapprove or modify the recommendation of the City Planning Commission within 60 days from the date of the filing of such recommendation with the Board which period will expire on March 21, 1971.

On January 28, 1971 (Cal. No. 95), the matter was laid over to this meeting.
For consideration.

drawn in an R 6 residential area, only 35% of the units would have required accessory off-street parking facilities. "Regulations to limit the height and bulk of buildings, determine the area of courts and other open spaces, to regulate and restrict the location of trades and industries and the location of buildings designed for specific uses, or creating districts for any such purpose" (Charter, Section 200) are also within the province of the zoning power. The City Planning Commission has the power to alter any and all of the zoning resolutions, subject only to a veto by the Board of Estimate. The Board must exercise its veto within sixty days of the new resolution promulgated by the City Planning Commission. The Board of Estimate's power over zoning is substantially shared with the City Planning Commission and the public. The Board is required to hold the public hearings on all zoning resolutons. In addition, if twenty percent of the owners of properties abutting or within 100 feet of the area affected by the changed regulation protest the change in writing, then three-fourths vote of the entire Board is necessary before the resolution becomes effective.

The current division of land use and zoning powers between the Board of Estimate and the City Planning Commission has often been criticized as being cumbersome and inefficient. It has been suggested that the complete power over land use and zoning be transferred entirely to either the City Planning Commission or the Board of Estimate. Vesting these powers in one body would certainly increase decision-making efficiency if only because of a reduction of both the number of decision-makers and the number of steps needed for approval. Furthermore, consolidating these powers would sharpen the focus for community groups anxious to influence land use and zoning decisions.



Vesting these powers in only one body would also facilitate having public hearings held in the communities affected by the decision.

The original rationale underlying the creation of the City Planning Commission was to create a body to influence the zoning and land use decisions which had extensive professional expertise, was above political pressures, and had a city-wide perspective.

Thomas D. Thacher, Chairman of the New York City Charter Revision Commission (1936), wrote: "The Charter Commission has, therefore, concluded to continue the Board with its present composition and to bring into its deliberation, through the agency of a City Planning Commission, independent, competent, and public advocacy of the interests of the city as a whole. . . . The Planning Commission is made as independent of political influence and control as possible." (New York Times, November 11, 1936) The members of the City Planning Commission are presently appointed by the Mayor for a fixed term of eight years and may be removed only for official misconduct, negligence, or mental or physical disability. It was recognized by the Thacher Commission that the "ultimate responsibility" for changes in the city map and zoning regulations should remain with the Board of Estimate as publicly elected officials, but that the City Planning Commission would make recommendations which would be difficult to override in view of the requirement of a three-fourths vote.

Concentrating the zoning and land use powers exclusively in the hands of the City Planning Commission would tend to diminish the influence of local community groups. Though the City Planning Commission is required to hold public hearings, the fact that members are appointed for fixed terms enables them to disregard the testimony and

wishes of community groups. Under this system, an opposing group would only have recourse to the Mayor who, in turn, would be able to disclaim any responsibility. The "professional judgments" of the City Planning Commission would become land use policy without any further review by a political body. This would constitute a substantial enlargement of the power of the Mayor.

The other alternative, transferring the powers over zoning and land use decisions entirely to the Board of Estimate, would require moving the personnel of the Department of City Planning to the Board's jurisdiction. While this would provide the Board with needed staff, such professional opinions could only affect decisions to the extent of Borough Presidents' and city-wide elected members' convenience. Professional opinions could easily be dismissed if political expediency so required.

The somewhat adversary nature of the relations between the Planning Commission and the Board of Estimate seems to generate a socially productive conflict. Testimony to the Board of Estimate is sharpened by the more detailed discussion at the Planning Commission, and the recommendations of the Commission are prepared in the expectation of careful public scrutiny at the Board.

Under a system of political decentralization, where each local government could not only change zoning designations, but also the specific requirements of such designations, chaos would ensue. One district might permit construction of so much high-rise housing that the ancillary services of sewage, power supply, school space availability, etc., would not be adequate to sustain the increased demand. On the other hand, a system of administrative decentralization would at least bind the local governmental units to a uniform code of building restrictions. The natural propensity among small governmental units would be to maximize the amount of park land and to provide a minimal amount of commercial land. A compromise resolution might be that a formula based on population density, tax base, etc., could be developed that designates for each new governmental unit percentages of land use (i.e., 15-17% park and playground, 12-14% public buildings and tax exempt properties, 45-50% residential, 7-10% commercial, etc.). As previously indicated, the zoning power has tremendous repercussions in terms of the budget, because zoning affects the city's tax base.



Finally, the Board of Estimate has the power to approve sites and plans for urban renewal projects under state law. Housing and urban renewal projects have a significant impact on the city's finances because of the tax abatement which invariably accompanies such projects (Title I of the Housing Act of 1949, and Article II & V (Sections 36 A & 150) of the Private Housing Finance Law). These financial problems could be avoided under a system of administrative or political decentralization by creating parameters which require that the new governmental units raise a certain amount of revenue within their local jurisdictions. In short, the powers of the Board of Estimate over purely local zoning and street use matters could be decentralized only if the power to make decisions *and* the responsibility of raising revenues are vested in the same body. City-wide concerns (such as water tunnels) which transcend local lines would have to remain centralized, and obviously, some sort of central agency would have to be retained for defining the aforementioned parameters.

In matters concerning the city map and zoning the Board of Estimate is the compromise between city-wide and local control. Bringing the power to zone and make changes in

the city map to local governmental units would make coordinated city-wide planning virtually impossible. However, vesting these powers exclusively with the City Planning Commission or the Mayor would make it virtually impossible for local concerns to be adequately expressed. The presence of the Borough Presidents on the Board of Estimate means that local concerns about zoning and changes in the city map have a better chance of being heard.

g) Should the power to amend the capital or expense budget be exclusive with the Board?

The Board of Estimate is intimately involved in both the capital and expense budget adoption process, and the Board's statutory powers over the budget cannot be discussed independently of the individual budgetary powers of its members.

The Mayor is directly involved in the capital budgeting process at four different points and indirectly involved at several others. The Mayor must issue a certificate (Sec. 215) based on the Comptroller's report, setting the maximum amount of debt which the city may incur in the ensuing fiscal year. The City Planning Commission, which is appointed by the Mayor, holds public hearings and submits a draft capital budget. In point of fact this draft capital budget is drawn up together by the City Planning Commission and the Bureau of the Budget. The city-wide allocations are made by the City Planning Commission, while the technical decisions are made by the Bureau of the Budget (Sec. 217). The Mayor may then autonomously change the Planning Commission's recommendations, and then the amended document is sent to the Board of Estimate (where the Mayor and the Comptroller each hold 18% of the votes) and the City Council. The Board of Estimate



and the City Council both hold hearings on the proposed budget and may add or eliminate projects, change appropriations, or alter terms and conditions (Sec. 221). The Mayor may veto any such changes, which can then be overridden by a two-thirds vote of the Council and Board (excluding the Mayor) meeting in identical terms (Sec. 223). Thus, the Mayor is strategically involved in every step of the adoption process, with the exception of overriding his own veto.

Once adopted, the capital budget may be amended during the year only if approved by a two-thirds vote of the City Planning Commission, with the written approval of the Mayor, Board of Estimate, and the City Council (Sec. 224). However, the fact that the capital budget is a six year planning document means that the annual adoption is, in effect, an amendment to the existing document. Nonetheless, mid-year amendments to the capital budget are essential. In cases where more money has been budgeted for an item than is actually spent in its completion, the budget must be amended before those funds can be transferred to another project.

Adoption of the budget does not mean that the items contained therein will become realities; the budget must be implemented. Even after an item is included in the capital budget, the Board of Estimate must hold another public hearing before any money can be spent on the project. This process, called "initiating" a capital budget item, authorizes the Mayor to issue a Capital Project certificate (CP) against which billings can be made by the Comptroller. The Corporation Counsel then begins condemnation proceedings in applicable cases, and the department concerned advertises the relevant contracts for bidding. Projects requiring changes in the city map will come before the Board

yet another time. In addition, new sites for capital budget items must be approved by the Site Selection Board. The Site Selection Board consists of three mayoral appointees: the Director of the City Planning Department, the Budget Director, and the Municipal Services Administrator. Two publicly elected members of the Site Selection Board (who also serve on the Board of Estimate) are the Comptroller and the Borough President (or Presidents) of the area in which the project will be built. Consequently, community residents have several opportunities to argue capital budget items. They can appear before the City Planning Commission and the Board of Estimate; they can exert pressure on their Councilmen or Borough Presidents. So even though the City Charter prescribes the means for amending the capital budget, proposed projects can be prevented by a variety of administrative devices. The Mayor alone can thwart the implementation of a project by merely refusing to issue a CP or by instructing his appointees to not agree on a site. The Board of Estimate on the other hand, can thwart the Mayor and Council by refusing to close the mandated "initiation" hearing. (Note: a recommendation on this issue has been made in a separate report.)

Under the 1936 Charter, certain capital projects (like roads and sewers) were considered assessable improvements and could not be implemented unless local residents requested the construction. The old Charter recognized that borough or city-wide considerations might have to take precedence, so the Borough Presidents were empowered to request certain improvements in spite of local opposition. However, the delegation of authority does not ensure that it will be exercised; Borough Presidents rarely opposed the wishes of their constituents. Consequently,



there is currently a lack of major north-south arteries in Queens precisely because the priorities of the people living along major thoroughfares are different from those of the people who have to use them. Under the 1936 Charter, whenever the Borough President proposed straightening or widening a north-south artery, fierce opposition from abutters prevented the project from being implemented. The basic question of whether or not an efficient road system is more important than the quiet safety of a residential neighborhood will remain regardless of who makes the decisions on capital budget items.

It would appear to be reasonable and proper that the process for amending the capital budget should parallel the adoption process. Under the present system, the same bodies responsible for adopting capital budget items are also responsible for amending them, although the power of the City Planning Commission is much greater in the amendment process. If the amending process were made easier or concentrated in fewer hands than the adoption process, the budget would become a basically meaningless document, subject to constant circumvention through the amendment process. A budget is literally a statement of anticipated income and expenditures. The budget adoption and amendment processes are merely the means of determining how such money will be raised and how much will be spent. All points of view (city-wide, local and individual) must be strongly represented in the budgeting process if the government is to function with the consent of, and not in opposition to, the governed.

Increasingly during the last few years, disputes around the budget process have focused on local or community participation in the creation of the city's capital budget. In order to clarify the issues involved, one needs to dis-

tinguish at the outset between those capital projects which are already identified in the budget document and those which are contained in lump sum appropriations for agencies. Even in these major sub-divisions, it is necessary to distinguish between items serving areas larger than the community (such as, for example, automatic elevators in a borough hall) and items serving specific localities (such as a branch library).

The major thrusts of the public argument have been to establish procedures for local initiation, review and even veto. It has been said that the capital budget process neglects or ignores the priorities of the communities, denies them capital projects which they require, and inflicts on them capital construction against their wishes. Obviously, such a view tends to denigrate existing procedures and established processes for hearings and comments by community representatives and individuals *pro-se*.

Existing practice, of course, already deals with perceived community and city-wide needs. The generation of a capital project request by a city agency to the City Planning Commission, eventually reflected in the Executive Capital Budget, does not occur in a vacuum. It is based on the agency's perception of an area's need. There is no doubt that such an agency's perception may be at variance with the views of some or even all of the residents of the particular area, and at the Planning Commission hearings as well as at the Board of Estimate hearings there is considerable opportunity for the exploration and resolution of such differences.

In the event that city agencies are remiss in recognizing a capital requirement for a particular community, locally based organizations can request a planning appropriation or even construction funds at the aforementioned hearings,



or through Councilmen or Borough Presidents. That is not to say that this process could not be improved upon. Community Boards, particularly if they were more directly representative, could be granted capital budget initiation powers subject to review and approval by the City Planning Commission and the Board of Estimate. In effect, this would mean that these Boards could demand the discussion of a particular project that they desired at the executive level. It would be well to remember in analyzing the merits of such an arrangement that these Boards are in no way involved in raising the funds required for the project. In addition, it is important to keep in mind that New York City's population is highly transient.

The review powers now granted to Community Boards could easily be enlarged by granting them "powers of substitution." That is to say, if a project were proposed for their community in the amount of $3,000,000, such a Board could recommend to the Planning Commission a different capital project of equivalent cost, subject again to the approval by the Planning Commission and the Board of Estimate. It should be self-evident that these powers would fall far short of the power to veto and that there is little reason to believe that such absolute power should rest in any locality. One should also be aware that a realistic, if not legal, veto exists at present. If there were an overwhelming opposition to a particular project, pressure on local and city officials would tend to prevent its final approval.

A new city water tunnel running through four of the five boroughs and requiring extensive excavation and demolition is a classic example of the need for a central final authority. It is less evident when dealing with the construction of a new intermediate school and even less when

dealing with a branch library. Each of these is clearly identified in the capital budget and each of these is therefore subject to the series of public forums discussed earlier. It is, however, virtually impossible to publicly discuss those capital budget improvements purely local in nature and contained in lump sum appropriations, such as a traffic light.

Assuming but not granting the local nature of the last example, it could be argued that a particular community should have the absolute right within a pre-determined budget appropriation to select the sites of traffic control devices. In order to place such public improvements in their proper perspective, it must be noted that traffic lights control not only the vehicular and pedestrian traffic at their own locus but influence the flow and frequency of traffic in adjoining communities and may well have a substantial impact on arterial traffic surrounding the subject community.

Moving up in the scale of "localness," a brief analysis of the impact of a branch library or an intermediate school will indicate their cross-community impact. Siting a new branch library or intermediate school must be related, if planning is to have any meaning at all, not to existing population but to future population patterns and to the demographic projections for the area.

It should be evident from this review that in the expansion of community powers as distinct from community consultations, there inheres the grave risk of intra-community chauvinism and inter-community alienation.

Finally, any discussion of capital budget programs would lack validity if the impact on the expense budget were ignored.



# BOARD OF ESTIMATE

**Journal of Proceedings of Meeting of the Board of Estimate, Held in Room 16, City Hall, Monday, February 2, 1970.**

**The Board met pursuant to adjournment.**

Present—Werner H. Kramarsky, Special Assistant to the Mayor (4 votes); Abraham D. Beame, Comptroller, and Joseph J. Perrini, Acting Comptroller (4); Sanford D. Garelik, President of the Council (4); Percy E. Sutton, President, Borough of Manhattan (2); John J. O'Neill, Acting President, Borough of Brooklyn (2); Bertram A. Weinert, Acting President, Borough of The Bronx (2); Ralph F. DeMarco, Acting President, Borough of Queens (2); and Rocco D. Zasa, Acting President, Borough of Richmond (2).

**The President of the Council, the Honorable Sanford D. Garelik, presided.**

Where no motion is recorded in the disposition of the following items, the Chair, without objection, directed the roll call.

**PUBLIC HEARING**

**STATUTORY**

**On Change in the Expense Budget**

**Cal. No. 1.**

**Public Hearing in Matter of Proposed Transfer of Funds from Fund for Salary and Wage Accruals to: (1) Mayoralty, to Establish Office of Intergovernmental Relations; and (2) President of Council and City Council, to Adjust Annual Compensation of President and Councilmen.**

(Second Call)

The Acting Secretary presented an affidavit of publication, showing that the matter has been duly advertised in accordance with Section 124c of the New York City Charter.

The Acting Secretary also presented the following report of the Mayor:

City of New York, Office of the Mayor, New York, N. Y. 10007, January 13, 1970.

*To the Board of Estimate and the City Council:*

Gentlemen—In recent communications, the President and the Vice-Chairman and Majority Leader of the City Council requested modification of their respective 1969-1970 budgets in order to provide adjusted annual rates for the President and Councilmen.

Local Law No. 82, effective January 1, 1970, amended the Charter of The City of New York in relation to the compensation of the President of the Council and Councilmen. The salary of the President of the Council was increased from $35,000 to $40,000 per annum and the salary of 37 Councilmen was increased by $10,000 per annum. Total funds required to effectuate the modification for the balance of the fiscal year amount to $187,500.

In a separate action, the undersigned further requests modification of the budget for 1969-1970 to provide for the establishment of an Office of Intergovernmental Relations within the Office of the Mayor. The Charter of The City of New York grants the Mayor the power to create bureaus, divisions or positions within the executive office when the need arises. On January 5, 1970, the establishment of a new position of Deputy Mayor was announced, who would be responsible for a newly created Office of Intergovernmental Relations. One of its major responsibilities would be to obtain for the City its fair share of every State and Federal tax dollar.

The ability of the City to provide its citizens with the services to which they are entitled is directly linked to the resources which are available from Federal and State sources. By the appointment of an additional Deputy Mayor and the establishment of the Office of Intergovernmental Relations, the City will have a full-time coordinated effort to strive on its behalf. This office will be responsible for the development and management of the City's Federal and State legislative programs, as well as to coordinate legislative strategy.

# PUBLIC HEARING

February 2, 1970 550

It is estimated that funds in the amount of $230,750 will be required for personal service (including expert services) and other-than-personal service for the Office of Intergovernmental Relations.

Since insufficient funds are available in existing appropriations, it is requested that the sum of $418,250 be transferred from Funds for Salary and Wage Accruals (Code 098-009) to the following:

| Department | Amount |
|---|---|
| President of the City Council | $2,500 00 |
| The Council | 185,000 00 |
| Mayoralty—Office of Intergovernmental Relations | 230,750 00 |
| Total | $418,250 00 |

Adoption of the attached resolution will effectuate the above transfer of funds and is, therefore, recommended.

Very truly yours,

JOHN V. LINDSAY, Mayor.

No one appeared in opposition or in favor.

The hearing was continued to February 13, 1970.



**PUBLIC HEARING**

—

**STATUTORY**

—

**On Change in the Expense Budget**

—

**Cal. No. 23.**

**Public Hearing in Matter of Approving Transfer of Funds from Fund for Salary and Wage Accruals to: (1) Mayoralty, to Establish Office of Intergovernmental Relations; and (2) President of Council and City Council, to Adjust Annual Compensation of President and Councilmen.**

(Second Call)

The Acting Secretary presented an affidavit of publication, showing that the matter has been duly advertised in accordance with Section 124c of the New York City Charter.

The Acting Secretary also presented a report dated January 13, 1970, of the Mayor (printed in the Journal of Proceedings of the meeting of February 2, 1970—Cal. No. 1), submitting a resolution, recommended by him, approving an appropriation of $2,500 and $185,000 for the President of the Council and the Council, respectively, to provide funds required to implement the provisions of Local Law 82 of 1969. An appropriation of $230,750 has also been requested for the establishment of the Office of Intergovernmental Relations.

On February 2, 1970 (Cal. No. 1), the hearing was continued to this meeting.

The Acting Secretary also presented an amended resolution.

The Honorable Mario A. Procaccino, Esquire, and Reuben R. Gordon, representing Associated Teachers Against Crime, Communism and Corruption, appeared in opposition.

No one else appeared.

Statements were made by the Mayor and the Comptroller.

Statements were made on roll call by the Mayor, the Comptroller, the President of the Council, the Acting Presidents of the Boroughs of Manhattan and Brooklyn and the Presidents of the Boroughs of The Bronx and Queens.

On motion of the Mayor, the hearing was closed, and the following amended resolution was offered:

Resolved, That the Board of Estimate and the City Council, pursuant to the provisions of Section 124c of the New York City Charter, hereby approve the transfer of funds within appropriations made for the fiscal year 1969-1970, effective January 1, 1970, as follows:

| | |
|---|---|
| **FROM** | |
| **Miscellaneous** | |
| Code 098-009, Fund for Salary and Wage Accruals | $418,250 00 |
| **TO** | |
| Program | Amount |
| **President of Council** | |
| I President of Council | $2,500 00 |
| **City Council** | |
| I Council | 185,000 00 |
| **Mayoralty** | |
| XVI Office of Intergovernmental Relations | 230,750 00 |

This resolution is hereby approved with the understanding that $25,000, earmarked for consultative services, will not be expended and that the four lines proposed in the Budget, totaling approximately $45,000, will be used for existing personnel.

Which was adopted by the following vote:

Affirmative—The Mayor, the President of the Council, the Acting Presidents of the Boroughs of Manhattan and Brooklyn, the Presidents of the Boroughs of The Bronx and Queens and the Acting President of the Borough of Richmond—18.

Negative—The Comptroller—4.

The expense budget adoption process is similar to the capital budget. Whereas the capital budget deals with the physical plant of the city, the expense budget deals primarily with paying the personnel who actually perform the services. The Mayor receives reports from the Comptroller and Finance Administrator on the various obligations and resources for the ensuing fiscal year. The Mayor submits his proposed budget based on these reports, and the Board of Estimate and City Council hold public hearings before adopting the budget. The Mayor may then veto any changes made by the Board or City Council, which veto can be overridden by a two-thirds vote of both bodies meeting in identical terms. The City Council is then responsible for setting a tax rate which will raise enough revenue to meet budgetary requirements. The Board of Estimate has only one real opportunity to act on the expense budget.

The procedure for modifying the expense budget is contained in the Charter (Sec. 124, i) "Upon recommendation of the Mayor, the Board of Estimate and the Council may, during any fiscal year transfer part or all of any unit of appropriation from one agency to another, or establish a new unit of appropriation within funds lawfully available therefor, or transfer all or part of any unit of appropriation for the purpose of establishing or adding to any new unit of appropriation, or change the terms and conditions of the budget; but in any such case there shall be public hearings."

Although the capital and expense budgets are separate documents, they are both closely related. Construction of a new hospital with capital budget funds will require that the expense budget provide the resources for staffing it several years hence. Such an item has city-wide implica-



tions in terms of the budget, health care planning, transportation, zoning, etc.

The factors involved in the issue of decentralizing the expense budget are highly complex. A study prepared by the City Administrator's office, which examined expense budget expenditures on a neighborhood by neighborhood basis, revealed striking variations in the per capita allocations of resources for various services. (See New York Times 11/13/72) The study found, for example, that educational costs averaged $1,677 per pupil in Bedford-Stuyvesant, and only $544 in Corona-Elmhurst. It is possible to hypothesize a reasonable scheme of allocating resources to the different communities, but there would still be problems on the local level.

Police expenditures per capita in Downtown, Fort Greene, Brooklyn are more than triple those for Bensonhurst-Gravesend. This disparity stems from the fact that the Brooklyn business district requires protection, but because of the nature of business districts, has relatively fewer residents. Thus, the expenditures on police in Downtown Brooklyn are also expenditures for those people who live in Bensonhurst-Gravesend, but who work or shop in the Downtown area. So, in terms of local initiation of expenditures for police protection, it would be unfair to allow the residents of Downtown Brooklyn to determine the priority of police protection when their decision will affect the lives of thousands who would have no opportunity to select the decision-makers. In addition, the nature of collective bargaining agreements which the city has made with municipal unions would mean that every change in the priorities of any district would lead to massive reassigning of personnel throughout the city. Thus, promotion or merit raises in one district would alter the budget

relationships sufficiently to cause reassignment in other districts.

Local review of expense budget allocations for a given neighborhood is far more feasible than allowing the locality absolute discretion in determining budgetary priorities. Local review would force the central bureaucracy to publish expenditures on a neighborhood basis. It would give the localities an opportunity to complain about allocations or priorities of which they disapproved, and to lobby for new programs and personnel which they consider more important. Essentially a consultation procedure, local review would permit maximum community input without jeopardizing city-wide priorities or contractual obligations.

Local veto of expense budget items would essentially be identical to local initiative. Though the neighborhoods would not be able to determine their own priorities from an affirmative point of view, they would be able to keep rejecting anything they disliked until the central agency promulgated the programs and priorities which the neighborhood desired.

New York City residents generally recognize that they do not live in isolated communities, but rather in highly complex, interdependent environments. Discussions with Community School Board members, agency Commissioners, and other officials who deal regularly with the public indicate that the vast majority of city residents have neither the time, the interest, nor the willingness to make decisions which fall into the province of paid, full-time, professional government workers. The public, however, does want to be heard, to be kept informed, to get honest answers to questions and to be able to identify the decision-makers. For most people, responsive local government means good schools, regular garbage collections, clean streets, and effi-



cient police and fire protection. The Board of Estimate is deeply involved in the establishment of priorities and in resolving conflicts between various local and city-wide interests. It is impossible to decentralize the conflict resolution mechanism; there must be one final authority as long as the city remains one unit.

The resources of the City of New York are limited, though the demands made upon them are infinite. Therefore, resource allocation is necessary. The Board of Estimate is just one of the bodies participating in this process, but it is the one which has developed systems and expertise in the resolution of conflict between local and city-wide interests. Removing the Board from the budgeting process and transferring its powers to the Mayor, Comptroller, City Council or local governmental units will not obviate the necessity for some sort of strong centralized authority to allocate resources and resolve conflicts. The failure of the city to provide a viable mechanism for resolving its own conflicts will mean that the State, which has ultimate authority for governing the cities, will assume that responsibility.

h) Other relatively minor functions of the Board.

The preceding questions have discussed the major powers of the Board of Estimate. The Board's exercise of these powers on issues with city-wide ramifications would appear to be necessary and appropriate. There are, however, other powers which have been granted to the Board or assumed by it which could be transferred to an agency assigned to the borough or district level.

1. The entire category of items dealing with awards for deaths or injuries to members of the Police and Fire De-

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

partments could quite easily be removed from the Board's jurisdiction. The Board should not be a "court of last resort," and relatively minor items such as these only encumber the calendar with matters which, while vital to the parties concerned, do not require the application of the Board's special powers.

*Item Number 203 (Calendar E)*

This item, unanimously approved by the Board, is a typical example of an award being made to the relative of a police or fire officer who died from causes attributed to the discharge of his duties. The function could not be transferred to a local body as boundaries would inhibit expeditious settlement. For example, who would be responsible for allocating an award if a patrolman who lived in District A, was injured in District B, and died in a hospital in District C? Administrative guidelines established by the Comptroller and Corporation Counsel could allow this matter to tbe dealt with effectively by the Department of Personnel. If an appeal for an award were rejected, the matter should then be decided by the courts.

*Item Number 206 (Calendar E)*

This request for an award for injuries sustained by a private citizen while attempting to prevent a crime is slightly different from the above item in that it does not deal with Police or Fire Department officers. This matter has also been put within the Board's jurisdiction by the Administrative Code, yet there is no reason why it could not be administered by the Department of Personnel following guidelines set by the Comptroller and the Corporation Counsel.



CALENDAR E—July 22, 1971

## No. 203

R-154

RESOLUTION for consideration, submitted by the Director of the Budget, awarding Mrs. Julia Tiunis, widow of Patrolman Vincent Tiunis, the sum of $11,724.65, being the annual salary at the time of his death on December 9, 1970 resulting from causes attributed to the discharge of his duties.

On May 20, 1971 (Cal. No. 341), this matter was referred to the Director of the Budget.

REPORT of the Director of the Budget, dated June 24, 1971, stating that Patrolman Tiunis was appointed to the uniformed force of the Police Department on February 1, 1955 and died on December 9, 1970.

Investigation reveals that there is a report on file of the Investigating Officer in which it is stated that Patrolman Vincent Tiunis died of a heart attack on December 9, 1970.

The Investigating Officer reports that Patrolman Tiunis died in the proper performance of police duty, with no contributory negligence on his part.

Chapter 378 of the Laws of 1971, "Heart Bill", states that any condition of health caused by diseases of the heart resulting in death of a paid member of the Police Department shall be presumptive evidence that it was incurred in the performance and discharge of duty.

On April 24, 1971, the Board of Trustees, Police Pension Fund, Article No. 2, upon the recommendation of the Medical Board of the Police Department, granted Mrs. Julia Tiunis an annual pension of $5,906.30 as provided in Section B-18-39.0 of the Administrative Code, City of New York. Section B-18-39.0 provides, in part, that the evidence shall be submitted to such board proving that the death of such member was the natural and proximate result of an accident sustained while a member and while in the performance of duty at some definite time and place and that such death was not the result of wilful negligence on his part.

Section 67-1.0 of the Administrative Code provides that the Board of Estimate is authorized and empowered to make an award to the widow of a member of the Police Department killed while engaged in the discharged of duty. Such award shall equal the annual salary of such member at the time of his death.

For consideration.

CALENDAR E—July 22, 1971

## No. 206

R-5172, 9871

IN THE MATTER of a petition of Joseph Cohen for an award, pursuant to the provisions of Section 67-3.2 of the Administrative Code, for personal injuries received by him while attempting to prevent the commission of a crime.

On October 10, 1968 (Cal. No. 120), this matter was referred to the Comptroller and the Corporation Counsel.

REPORT of the Second Deputy Comptroller, dated May 5, 1971, recommending that payment be made to Joseph Cohen in the amount of $890, pursuant to Section 67-3.2 of the Administrative Code and submitting a proposed resolution.

REPORT of the Corporation Counsel, dated June 30, 1971, stating that it is his opinion that the injuries and damage herein resulted from an attempt by the petitioner to prevent "the commission of a crime against the person or property of another, preserve the peace or prevent public disturbances," and that the Board, in its discretion, may compensate the petitioner for the damage sustained by him.

Resolution for adoption.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

2. One administrative matter that should be assigned to a Mayoral agency rather than to the Board of Estimate is the disposal of city records which are deemed obsolete.

*Item Number 123 (Calendar D)*

Requests for permission to dispose of records come from all sectors of the city government (the Department of Health, Queens County Clerk's Office, Department of Purchase, New York City Transit Authority, etc.). The decision to dispose of such records after it has been approved by the Municipal Archives and Records Center and the Corporation Counsel's office could easily be made by the Mayor's or Comptroller's office. In order to prevent inappropriate disposals, the agency should be required to advertise and provide time for public objection and legal action.

3. Other items which the Board has to approve which are purely administrative, and which could be dealt with at another level by other agencies include: the settlement of illegal but equitable claims, the release of bonds, and the payment of refunds in connection with petitions for the release of property.

*Item Number 120 (Calendar A)*

Claims which the Comptroller brings to the Board as illegal but equitable and proper to be paid (Section 93 (d) —3.01 of the Administrative Code) usually involve work completed in excess of what was specified in the contract, or matters where an excess of money was spent above what was stipulated in the contract.

These claims are first brought to the notice of the Comptroller who confirms that, in fact, the monies claimed have been spent and for a just purpose. The resolution is sent

CALENDAR D—March 11, 1971

## No. 123

R-9370

RESOLUTION for adoption, authorizing the destruction of certain old records of the Department of Health deemed to have become useless due to obsolescence, pursuant to the provisions of Section B49-13.0 of the Administrative Code.

COMMUNICATION dated October 21, 1970, from the Secretary, Department of Health, recommending the destruction of the obsolete records.

REPORT of the Director, Municipal Archives and Records Center (Office of Communications Services), dated October 27, 1970, recommending the destruction of the obsolete records.

CERTIFICATE of the Corporation Counsel, dated February 17, 1971, stating that the destruction of the records will not affect the interest of the City in any pending, anticipated or contemplated claim, action or proceeding by or against the City.

Resolution for adoption.



CALENDAR A—January 14, 1971

## No. 120

R-9058

RESOLUTION for adoption, submitted by the Deputy Comptroller, authorizing the payment of $550 to Coffey and Levine, Architects, for money alleged to be due in connection with work performed under Contract No. 201851 entered into with the Department of Parks for the design and reconstruction of a portion of the East River Park in the Borough of Manhattan.

REPORT of the Deputy Comptroller, dated December 14, 1970, certifying that the claim is illegal but equitable and proper to be paid if the Board, by unanimous vote, determines that the public interest will be served by payment thereof.

Resolution for adoption *(requiring a unanimous vote)*.

## No. 161

R-3427, 9064

IN THE MATTER of a request for the release of a bond in the sum of $4,500 deposited by Janel Construction Co., Inc., for Hilja Housing Corp., in connection with the closing of Barnes Avenue, Borough of The Bronx.

On June 18, 1970 (Cal. No. 266), this matter was referred to the Corporation Counsel. On July 23, 1970 (Cal. No. 140), this matter was referred to the Department of Highways and the Department of Parks.

REPORT of the Acting Corporation Counsel, dated July 13, 1970, stating that the Board on October 9, 1969 (Cal. No. 23-A), accepted agreements dated October 17, 1966 and August 14, 1969 and the above referred to bond which provides that Janel Construction Co., Inc. will transport the rock excavations on its property within and abutting the lines of Barnes Avenue as required by the Department of Highways to the Hutchinson River Parkway areas as directed by the Department of Parks.

If the Department of Highways and Department of Parks will report to the Board that said work has been completed to their satisfaction, there being no further need for the security, the Board may adopt a resolution releasing the same as requested.

REPORT of the Transportation Administration, dated September 1, 1970, recommending that said bond be released.

REPORT of the Parks, Recreation and Cultural Affairs Administration, dated December 9, 1970, recommending release of said bond.

Resolution for adoption.

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

to the Board by the Comptroller and requires a unanimous vote. If advance notice of these claims was given, and if they were posted in the City Record for public scrutiny, there is no reason why the Comptroller's decision (subject to the Corporation Counsel's approval) should not be final.

*Item Number 161 (Calendar A)*

This request for release of a bond is a simple administrative matter with which the Comptroller could deal after the required investigation by the Corporation Counsel and the appropriate agencies.

*Item Number 96 (Calendar E)*

This resolution for the payment of a refund falls under the Board's power to dispose of city property. After an investigation by the Department of Real Estate and the Corporation Counsel, the matter could be easily handled by the Comptroller's office because it is administrative.

4. Although all retirement and pension matters were removed from the Board's jurisdiction over three years ago, Title C of the Administrative Code under the heading *Board of Estimate* (Section C-3-1.0 pertaining to the authority to recommend retirement, etc.,) is still within the Board's jurisdiction. There appears to be no persuasive reason why this power remained with the Board. (See Item Number 214, Calendar F)

. . . . . .

Note: There are other minor functions which the Board is empowered to undertake through state legislation which, in fact, could be removed from its jurisdiction. Although some of these powers do not pertain to Charter revision, a full listing of all the powers granted to the Board will be found in Appendix "A." The distribution of Board of Estimate responsibilities to other agencies as discussed in this section relates not to the issue of decentralization, but rather to rationalizing the functions of the Board.



CALENDAR E—July 22, 1971

**No. 96**

R-13412

**RESOLUTION** for consideration, recommended by the Commissioner of Real Estate, authorizing the payment of a refund from the Real Property Fund in the sum of ($200.00) without interest, costs or other charges to August Canossa and Josephine Canossa both residing at 2443 East 16th Street, Brooklyn, N. Y. which sum was deposited in connection with a petition for a release of the City's interest in a portion of Emmers Lane (Block 7418 adj. to Lot 70), Borough of Brooklyn (Committee Cal. No. 284).

On September 8, 1970 (Cal. No. 49) the Committee on Acquisition and Disposition of City Property referred this matter to the Commissioner of Real Estate for report.

**REPORT** of the Commissioner of Real Estate, dated June 30, 1971 stating that in a communication dated May 13, 1971 the Corporation Counsel advised that the City's interest in the property is merely an alleged "Cloud on Title" and in such cases the City of New York will only give a release to an abutting owner if such owner already has title to the underlying fee and can establish that fact by a recognized title company policy. In this instance neither the City nor the petitioners are the owners of such underlying fee title and in view of this petition for the release of the City's interest in the subject parcel to the petitioners must be denied.

It is recommended that the petition of August and Josephine Canossa be denied and that the sum of $200 deposited with the petition be returned to the petitioners.

For consideration—one resolution.

CALENDAR F—November 11, 1971

## No. 214

R-999

COMMUNICATION dated October 28, 1971, from the Office of Probation, requesting the retirement of Mrs. Madeline M. Thulin, Clerk, Office of Probation, Borough of Manhattan, pursuant to the provisions of Section C3-1.0, C3-2.0 and C3-3.0 of the Administrative Code.

Refer to the Comptroller.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

i) Should the Board remain in existence, its powers unaltered, and voting composition unchanged, or merely as an advisory body, with no administrative or executive powers?

As previously discussed, the Board of Estimate is so much an integral part of the governmental process in New York City that it has proved impossible to abolish or dissolve it. Despite the public complaints about responsiveness and accountability, one must recognize the cohesive role of the Board as it functions to resolve conflicts between city-wide and local interests, as well as in settling of inter-agency disputes.

This organic need for a small, elected body responsible for setting policy on matters relating to the city and its people has always been reflected in past charter revisions. It is noteworthy that the 1935 Charter Revision Commission, which sought to provide a simpler and better organization for the city's government, deliberately retained the Board of Estimate. The proposed Charter of the 1960 Moore Commission, a powerful advocate of decentralization, also favored retention of a "development board," although taking away all budgetary and financial responsibility. (It is ironic to note that the original functions of the Board of Estimate were primarily fiscal).

Recommendations have also been made that the Board continue in existence but with a different composition. In addition to changes in the distribution of voting power, it has been suggested alternatively that the Mayor, Comptroller, or City Council President not serve on the Board. Those who suggest that the Mayor not serve on the Board, but execute the policies of the Board are, in essence, trying to move the mayoralty toward a city manager concept. The desire to de-politicize the Office of the Mayor, to re-

move him from the policy making process, is not now a reasonable expectation. The public, although critical of a particular Mayor, sees the office as the most specific focus for community protest. The turnout for general elections for Mayor indicates a public desire to select an individual for the execution of stated policy goals. It is possible that the city manager, an employee of a board of directors, may be preferred at some future time; even then it would probably be desirable to have him serve as a voting member of such a board.

Furthermore, the notion of de-politicizing the Mayor's office is not realistic in a city as diverse as New York. The thesis that there exists, underlying the conflict and strife, a basic governmental policy which can command unanimous support among the various elements of the city is based on an idealized vision of the city's residents. The conflicts are real and the stakes may be as high as one's home or residence. In such circumstance, leadership does make a difference.

The most frequent criticism of the Board relates to the position of the President of the City Council. Without entering into the common argument that the office should be abolished and its place taken by the Majority Leader, it is necessary to evaluate the position of this city-wide elected official on the Board. It is certainly appropriate to deny his position on the Board on the basis of his not representing the membership of the City Council, since he is not elected by the members of the Council nor is he in sufficiently close political dialogue with them for representation purposes. However, the relationship between the Council President and Council members individually provides an opportunity for the legislators to have their views made known to the Board of Estimate. This, however,



should not be seen as the primary reason for the retention of the Council President or an equivalent on the Board of Estimate. Each of the members of the Board as presently structured has day to day operating responsibilities and direct and constant intercourse with line agencies of the city government; only the Council President does not. It is useful and desirable to the deliberations of the Board of Estimate to have the guidance of a city-wide elected official not so burdened and involved.

The argument for denying the Comptroller a position on the Board of Estimate is generally linked with the concept of changing the position to an appointive one. Proponents of this view claim that the Comptroller's office duplicates the functions of the Bureau of the Budget. It is not appropriate to discuss here the significant differences between the Budget Bureau and the Comptroller's office. Suffice it to say that they are substantive as well as political. That is not to say that there are not areas of overlap. However, under the present construct, these serve a necessary purpose.

The Budget Bureau is a Mayoral agency (despite the fact that it provides expert opinion for other elected officials) and as such prepares its reports to serve the policies and priorities of an administration headed by the Mayor. The Comptroller's office, headed by a publicly elected official, has sufficient expertise and is sufficiently autonomous to critically analyze and, where necessary, contest the claims of the Budget Bureau. The traditional rivalry between the Comptroller and the Mayor may delay the processes of the Board, but in the final analysis, it serves to enlarge the public discussion and the availability of facts and figures.

These three officials are concerned with the welfare of the city as an entity; it is left to the Borough Presidents

to add local sentiment and opinion to the Board's deliberations. Needless to say, the Borough Presidents are equally as concerned with city-wide policy as are the other members of the Board. It must be recognized, however, that they are often subjected to more intense local pressures. The greater availability and accessibility of the Borough Presidents for personal consultations, conferences, meetings, and inspections is of tremendous importance to the citizens of a borough. The ability of the community leaders to bring their problems directly to the Borough Presidents contributes to citizen participation in government. It is unique to the office that a Borough President, as a member of the Board of Estimate, is able to approach the solution of local conflicts with an intimate knowledge of city-wide problems, policies and programs. Bringing the attributes of chief executive of his borough to the deliberations of the Board is a vital balancing force. Former Mayor Wagner, concurring with this concept, has noted that at the time he held office people perceived the Borough Presidents' offices as receptive conduits into the governmental decision-making process.[25]

It must be pointed out that the present balance of the Board of Estimate votes provides the city-wide elected officials, acting in unison, with a clear majority. Should the composition of the Board be altered or voting power be reallocated, the question of prevailing power must be resolved. It may be argued that three city-wide officials are less apt to act in concert than are two such officials, particularly if the issue before them is controversial. Thus, the two questions that need to be answered when discussing the distribution of votes are: (1) whether or not the city-wide officials should hold a majority of votes, and (2) whether or not the Borough Presidents' votes should be redistributed according to population?



The answer to the first question is "yes." Even those who advocate removing the City Council President from the Board suggest that the two remaining city-wide officials get six votes each and the five Borough Presidents two votes each, thereby maintaining the city-wide officials' majority. Giving the local members a majority (be they Borough Presidents, Councilmen-at-Large, or other representatives chosen by a segment of the city) would tend to lead to the re-creation of the oft-cited Borough President's veto. It is not difficult to imagine that any Borough President would hesitate to vote for a project opposed by another Borough President for fear of retaliation at a politically inconvenient moment. Therefore, most projects would be subject to an absolute approval of the resident representative. Consequently, major projects like the water tunnels might never be built or at least might be unduly delayed by neighborhood opposition. The political liabilities inherent in such projects would be highly evident and personalized; political survival strategies rather than merit consideration would tend to prevail in determining the fate of the project. In short, shifting a majority of the votes to the local members of the Board of Estimate would seriously undermine the Board of Estimate's ability to protect city-wide interests.

The question of whether or not the Borough Presidents' votes must be reapportioned is one that has already been decided by the courts in *Bergerman* v. *Lindsay*.[26] In any case, keeping control of the Board with its city-wide members and reapportioning the Borough Presidents' votes according to population would reduce the Borough President of Staten Island to the status of an observer in the Board's deliberations.

*Conclusion*

This study has presented an analysis of the scope of the Board of Estimate's activities as it presently exists. It has further analyzed some alternatives in the nature of administrative or political decentralization. It would be impossible, however, to consider the report complete without a brief discussion of the distinctions between the functions of the Board of Estimate and the functions of those agencies of government which are directly related to the delivery of services.

Without taking a position in the argument that has been extensively made that there has been a diminution of services, and without granting the assumption that decentralization, either political or administrative, would improve or expand such services, it is well to note that the Board of Estimate is not and cannot be considered a services-related agency. It therefore must be studied quite separately from those agencies which are affected by government attempts to respond to citizen concerns over the delivery of service.

Obviously, the Board of Estimate participates as a policy-setting body in solving these problems, but in no way does it direct the delivery of services designed to implement the policies.

The criterion used for determining whether or not any of the Board's functions could be reassigned was to decide whether or not the particular power exercised served a local or city-wide interest. It was found that the overwhelming majority of the Board's functions dealt with matters which served the interests of the city as an entity and which could only be decided by a central policy-making organ.





The greatest volume of controversy surrounds the prerogatives of city planning. There is virtually no argument about the inevitable city-wide impact of changes in the mapping or zoning of particular areas. However, the immediate unique issue is often viewed as "purely local" in its effect.

Any Charter Revision Commission would find the need to create an institution which would have an overview of the affairs of the city. This is the position the Board of Estimate has held for a hundred years, and there seem to be no pressing arguments for change.

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

***References***


1. New York State Commission on the Governmental Operations of the City of New York, (Moore Commission.) *Interim Report,* 85ff.
2. *Id.; Greater New York Charter* (Ash, 1897) cxii.
3. *Greater New York Charter* (1897) Paragraph 74.
4. New York State Charter Revision Commission (1900).
5. *Greater New York Charter* (1901).
6. Laws of 1905, c. 629, Paragraph 14.
7. Laws of 1911, c. 679.
8. Laws of 1916, c. 497.
9. Laws of 1920, c. 427.
10. Laws of 1924, c. 363.
11. *Report of the Joint Legislative Committee to Investigate the Affairs of the City of New York,* (December 28, 1932) p. 6.
12. *Report of the New York City Charter Revision Commission,* 1936. (Thacher Commission), p. 7.
13. *Id.,* 18 et seq.
14. *Childs* v. *Moses,* 1942.
15. New York City Charter, 1936.
16. *New York Herald Tribune,* April 28, 1936.
17. Laurence A. Tanzer, *The New York City Charter* (New York: Clark Boardman Co., Ltd., 1937) p. 480.
18. Bergerman v. Lindsay, 58 Misc. 2d 1013, 297 NYS 2d 421 1969).




*Exhibit A Annexed to the Affidavit of Werner Kramarsky*


19. Bergerman v. Lindsay (58 Misc 2d 1015).
20. Bergerman v. Lindsay (25 NY 2d 409).
21. Laurence A. Tanzer, *The New York City Charter,* p. 480.
22. *Ibid.,* p. 491.
23. Matter of Ungar (Wagner, 20 Misc. 2d 403, 195 N.Y.S. 2d 2 (1961).
24. Corporation Counsel of the City of New York Opinion No. 107, 737.
25. Testimony before the Temporary State Charter Revision Commission, December 5, 1972, p. 5648.
26. Bergerman v. Lindsay (25 NY 2d 409).

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

## APPENDIX "A"

The powers granted to the Board of Estimate fall into the following seven major categories.

I. Use of Property of/For City

The Board may:

1. Grant leases of city property, concessions for use of city property, and enter into leases of property to city for city use. (67.1)*
2. Use city property for any public purpose. (67.2)
3. Withdraw from E.D.A.* and assign for other use, or transfer to the jurisdiction of any other agency, any wharf property owned by the city but not under lease. (1303.2.a)
4. Approve leasing city wharf property. A person who has a proposed lease turned down by administration may submit it directly to Board of Estimate. (1303.2.f)
5. Approve establishment of camps in parks to furnish free instruction and maintenance to children between ages of six and sixteen. (Administrative Code 67-4.0)
6. Pass upon all applications to lease any real property for the purpose of the city. (Administrative Code 67 (1)-1.0)
7. Transfer the jurisdiction and control of any street from one agency to another. (Administrative Code 67 (2)-1.0)

* Economic Development Agency.



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

8. Grant to Fire Department locations on any public property. (Administrative Code 67 (2)-2.0)
9. Set aside for neighborhood recreation, playground, etc., land or building owned by municipality not devoted to other public use. (General Municipal Law 241)
10. Pass resolution authorizing condemnation or acquisition of property and franchises of persons, firms or corporations used in operation of omnibus lines entirely within city. (General City Law 20, 20d)
11. Designate any building in city to be common jail. (Administrative Code 67 (2) 3.0)
12. Designate any lands owned by city for public market. (Agriculture & Markets Law 267)
13. Designate for use as a central live poultry market any land owned or leased by city. (Agriculture & Markets Law 267 (a))

II. Public Improvements

The Board may:

14. Authorize "physical improvement" other than by city pursuant to definition in Section 211.l (d) on application of interested owner of real property. (229)
15. Authorize initial payment of costs incurred by Department of Highways to pave sidewalks, etc., pursuant to Section 230, a. (230.e)
16. Approve terms whereby city may repair, improve sidewalks, etc. (230.e)

17. Approve E.D.A. licensing and permit private owners of wharf property to make necessary improvements on property, etc. (Administrative Code 703-3.0)

18. Pass resolution establishing a recreation commission to equip, operate and maintain playgrounds and recreation centers. (General Municipal Law 243)

19. Concur with "governing board" of municipality to construct and maintain a memorial in commemoration of U.S. soldiers, sailors. (General Municipal Law 77-a)

III. Disposal of Property

The Board:

20. Must approve dispositions of real property of city, unless power expressly vested in another agency. (384.a & b)

21. May give to person a grant or conveyance of right, upon payment of amount allowed by law, to land lying within closed and discontinued street. (Administrative Code 323-2.0)

22. Directs Commissioner of Real Estate in regard to legal and financial matters concerning all property owned by the city. (Administrative Code 1082-1.0)

23. May provide conditions of sale of city's real property; property reverts to city if conditions are not met. (Administrative Code 384-1.0-6.0)





24. Many authorize conveyance of city property where Mayor has authorized acquisition of lands of private owners which are to be exchanged for such lands by city. (Administrative Code 384-7.0)

IV. City Planning and Zoning

The Board:

25. May approve City Planning Commission recommendations in regard to changes in city map and master plan; can override City Planning Commission by ¾ majority. (199.b, c)

26. May approve regulations for action on zoning laws, recommendations by City Planning Commission (200.2) If landowners protest, resolution not in effect unless ¾ of Board approves. (200.3)

27. Must give approval before filing of map of subdivision or platting of land. (202.a)

28. Must pass resolution to construct and use for private purposes pipes, conduits, tunnels under railroad tracks, and connecting bridges over streets of city. (374)

29. May approve setting aside unleased wharf property belonging to city by administration for general wharfage purposes, special kind of commerce, etc. (1303.2.h)

30. May approve changes in the waterfront plans of the city by administrator. (1304.1)

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

31. May approve changes by administrator of width or location of piers, and build or rebuild temporary wharf structures. (1304.2)

32. May direct Commissioner of E.D.A. to prepare plans for terminal facilities; may take necessary steps if plans include narrowing or widening of streets, etc. (Administrative Code B29-2.0)

33. May cause Board of Water Supply to make studies of city's water supply; may approve map or plan covering entire work of this article. (Administrative Code K51-3.0)

34. By resolution may create city planning commission. (General Municipal Law 234)

35. Must act whenever the local legislative body is authorized to take action under Article 14 (airports and landing fields.) (General Municipal Law 353) The Board also has powers under Title I of the Housing Act of 1944 and Articles II and V (Section 36A, 150) of the Private Housing Finance Law.

V. Contracts and Franchises

The Board:

36. Shall regulate sealed bids for contracts or public letting where work and/or supplies to be furnished exceeds $2500, except where by ⅔ vote Board orders otherwise (343.a), or by ⅔ vote may authorize bid which is not lowest. (243.b)



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

37. Shall regulate procurement or order awarded lowest bidder where work and/supplies to be furnished do not exceed $2500. (344.a)

38. May, by ⅔ vote, and with approval of Mayor, authorize the purchase of a patented article as to which competition cannot be secured. (348)

39. Has jurisdiction over consultant contracts. (349.a, b)

40. Has exclusive right in behalf of city to grant franchises, make contracts involving use of streets. (362)

41. Authorizes and executes contracts for every grant of or consent to a franchise, or modification thereof. (363)

42. Must authorize by ¾ vote a resolution authorizing a proposed contract. (372)

43. May direct changes to be made in the form of contracts as interests of city require (otherwise Corporation Counsel shall approve as to form). (394.b)

44. Shall fix rates and charges for wharfage, cranage, and dockage. (1303.2.i)

45. May, if work abandoned by any contractor, approve appropriate agency adopting all subcontracts made by such contractor for such work. (Administrative Cod 343-1.0c)

46. May by unanimous vote extend time for performance of any contract. (Administrative Code 343-2.0) May by unanimous recommenda-

tion permit Comptroller to release contractor from any fine or penalty incurred under a contract. (Administrative Code 343-3.0)

47. Shall prescribe regulations as to the manner that such bidder whose bid is accepted shall give security for faithful performance of contract. (Administrative Code 343c-1.0)

48. Must approve Commissioner of Water Supply entering into contract with person supplying or selling water. (Administrative Code 734 (2)-3.0)

49. May make contract with corporation for furnishing special water for fire, sanitary, and other purposes, etc. (Administrative Code 734 (2)-3.0)

50. Shall fix rates which Commissioner of Sanitation may charge for collection of ashes, garbage, etc., from businesses, etc., conducted for profit. (Administrative Code 755 (2)-3.0)

51. May approve agreement to provide for sale of lands under water inside high waterline, and purchase of lands outside of line, from upland owners of land. (Administrative Code 755(2)-3.0)

52. Shall set regulations for tax exemptions, reimbursements, etc., in contracts with railroad development company providing passenger service by railroad to or from stations in city. (General City Law 21c)

53. Shall approve rules (Section 269) set by E.D.A. to govern, control, etc., Department of



Markets in New York City. (Agriculture & Markets Law 270)

54. Must grant approval in order for the city to sell, lease, convey, exchange or otherwise make available to the Dormitory Authority, for a minimal consideration, any interest in real property of the city. (Education Law 1680, Community Colleges)

55. Must approve acquisition or leasing of property by city or corporation, and agreements between city and corporation as to use or occupancy of property. (Unconsolidated Laws 8088, Off Track Betting Corporation)

56. Must approve contracts of Off Track Betting Corporation. (Unconsolidated Laws 8090)

VI. Budgetary and Financial Matters

The Board:

57. May increase, decrease, or omit any unit of appropriation in budget as submitted, subject to veto of the Mayor. (120)

58. May restore or omit budget increases, reductions, omissions, etc., by ⅔ vote (without the Mayor voting) and with separate concurrence of the City Council. 121.c)

59. May, with the City Council, authorize use of cash in the tax appropriation and general fund stabilization reserve fund in excess of 30% of tax levy for current fiscal year for reduction of taxes in any succeeding fiscal year. (128.c)

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

60. May increase, etc., amount of appropriation for any capital project proposed, add any new capital project, change any terms thereof. (222)

61. May, by vote of ⅔ (except Mayor), restore or omit such increase, reduction, omission, addition or change vetoed in capital budget. (223.c)

62. May amend capital budget upon receipt of recomendation of ⅔ of City Planning Commission, the approval of the Mayor, and the concurrence of the City Council. (224.a)

63. Shall, upon direction of the Mayor cause a public hearing to be held, and may after such hearing direct project initiation. (228)

64. May authorize Comptroller to authorize expenditure of monies in real property fund for payment of charges city is required to pay under lease of real property owned by city and leased to others, and for payment of costs incurred in maintenance, etc. (252)

65. May authorize Comptroller to purchase from city at par its short term obligations or short term obligations of U.S. out of cash from sinking fund. (275)

66. May fix for any agency aggregate expenditure for supplies of less than $2500, or more not in excess of $5000 in any one calendar month. (342.c) Agency may make emergency purchase not in excess of $500. (342.d)

67. Must approve E.D.A. fixing charges for supply of water, etc. (1403.4(a) (4))



*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

68. May make award to widow or children of uniformed Police or Fire Department officer killed in discharge of duty. (Administrative Code 67-1.0)

69. May make award to widow of prison guard killed in discharge of duty. (Administrative Code 67-3.0)

70. May make award to spouse of school crossing guard killed in discharge of duty. (Administrative Cod 67-3.0)

71. May make award to spouse of any officer or employee of city killed in the discharge of duty. (Administrative Code 67-3.1)

72. May make award for death or injury of any person, other than peace officer, which shall be caused on transit facility in attempting to prevent commission of crime. (Administrative Code 67-3.2)

73. May determine any claim against city or agency when Comptroller certifies that claim is illegal, invalid. (Administrative Code 93 (d)-3.0)

74. May, upon written approval of Comptroller, cancel and annul all taxes, assessments and water rents and sales to city which become lien against any real estate owned by any corporation. (Administrative Code 93(d)-9.0)

75. Shall levy for, collect and pay monies to satisfy a final judgment against city. (General Municipal Law 83)

*Exhibit A Annexed to the Affidavit of Werner Kramarsky*

76. Must appropriate necessary lands and buildings before a public general hospital may be built. (General Municipal Law 126)

77. May award compensation for death or injury to any person (1) caused by policeman engaged in performing duties, or (2) resulting from assistance furnished to police officer in performance of duties. (Administrative Code 93 (d)-4.0)

78. May reapportion the cost of an assessable improvement authorized prior to January 1, 1962, except where portion of the cost is to be borne in whole or part by the property benefited and the final cost exceeds the estimated cost by 10%. (General Municipal Law 1149 (a); and 1936 Charter 303)

79. May designate commission, association, or person for burial of members of armed forces of U.S. and families; headstones. (General Municipal Law 148)

VII. OTHER

The Board:

80. Shall authorize disposal of absolescent city records. (Administrative Code B.49.13.0)

81. Shall approve recommendation for retirement of personnel. (Administrative Code C.3.0)

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* Unless noted, all citations refer to sections in the New York City Charter.



APPENDIX "B"

# RESOLUTION

**Adopted by the**

## BOARD OF ESTIMATE

**of**

## THE CITY OF NEW YORK

**January 25, 1968**

**(Cal. No. 18)**

## RULES OF PROCEDURE

**For the Conduct of the Business of the Board of Estimate**

## RULES OF PROCEDURE
## FOR THE CONDUCT OF THE BUSINESS OF THE BOARD OF ESTIMATE

Resolved, By the Board of Estimate, that the following Rules of Procedure for the Conduct of the Business of the Board are hereby adopted:

1. The regular meetings of the Board shall be held on the second and fourth Thursdays of each month at 10.30 a. m. in the City Hall, Borough of Manhattan, or as otherwise directed by the Board. The first meeting of each year shall be called by the Mayor upon due notice (Section 63, New York City Charter).

2. Special meetings may be called by the Mayor or by Members of the Board casting 12 votes.

3. Notice of all special meetings shall be sent to each member by the Secretary.

4. The Mayor, or in his absence the President of the Council, shall preside at all meetings (Section 63, New York City Charter).

5. The Mayor, the Comptroller and the President of the Council shall each be entitled to cast four votes and the President of each Borough shall be entitled to cast two votes (Section 62-a, New York City Charter).

6. A quorum shall consist of members in attendance casting 12 votes, including at least two members authorized to cast four votes each (Section 62-d, New York City Charter).

7. Members, or those acting in their places as authorized by the Charter, shall attend the meetings of the Board and shall remain during the session, unless excused by the Chair. A request to be excused shall be formally made and entered upon the record.

8. (a) Except as otherwise provided in the Charter or by law, the Board shall act by resolution adopted by a majority of the whole number of votes authorized to be cast by all the members of the Board (Section 62-b, New York City Charter).

(b) No resolution or amendment of any resolution shall be finally passed except at a meeting open to the public (Section 62-c, New York City Charter).

9. The Chair shall direct a roll call upon every proposition to be acted upon and all votes shall be taken by the ayes and nays. The vote of any member "not voting" shall be considered a negative vote.

10. The vote upon every proposition voted upon shall be recorded in the minutes.

11. A member may be excused from voting upon any proposition upon his statement of disqualification which shall be passed upon by the Chair, or for other reasons which shall be passed upon by a majority of the votes of the members of the Board present.

12. A unanimous vote is required in the following instances:

(a) Consideration of matters not on the calendar.

(b) Authorizing payment of equitable claims certified by the Comptroller. (Section 93d-3.0, New York City Administrative Code.)

(c) Awarding compensation for the death of or injury to any person: (1) caused by a police officer engaged in performing certain duties; or (2) resulting from assistance furnished to a police officer in the performance of his duties. (New York City Administrative Code, Section 93d-4.0.)

(d) Canceling taxes, assessments and water rents against real estate owned by organizations entitled to exemption. (Sections 93d-9.0 and 93d-10.0, New York City Administrative Code.)

(e) Extending the time for the performance of contracts. (Section 343-2.0, New York City Administrative Code.)

(f) Authorizing the Comptroller to release any contractor from any fine or penalty incurred under a contract. (Section 343-3.0, New York City Administrative Code.)

(g) Delegation to any member or committee of the Board of the power to act or hold hearings on any matter within its jurisdiction other than matters included in Chapters 6, 8, 9 and 14 of the Charter. Such delegation shall not apply to any particular matter specified by any member in a notice filed with the Secretary of the Board. (Section 65, New York City Charter.)





13. A three-fourths vote is required in the following instances:

(a) The adoption of a resolution or amendment of any resolution at the same meeting of the Board at which it is originally presented (Section 62-c New York City Charter.)

(b) Granting franchises or rights to use any street or railroad, pipe or other conduits or ways or otherwise for the transportation of persons or property or the transmission of gas, electricity, steam, light, heat or power, or the installation of transformer vaults, not less than 27 days after the form of contract and resolution of the Board authorizing the same shall have been entered upon the minutes of the Board and public hearing held thereon. (Sections 362, 370, 371 and 372, New York City Charter.)

(c) Approving additions to or changes in the City Map which have been disapproved by the City Planning Commission or upon which the City Planning Commission shall have failed to make a report within ten weeks from the date of referral by the Board (Section 199-b, New York City Charter.)

(d) Reapportioning the cost of an assessable improvement authorized prior to January 1, 1962, unless the final cost shall exceed the estimated cost by more than 10 per cent. (Section 1149, New York City Charter and Section 303 of 1936 New York City Charter.)

(e) Approving subdivision maps or plattings of land disapproved or not reported on by the City Plannnig Commission within ten weeks after referral by the Board. (Section 202-a, New York City Charter.)

(f) Approving, disapproving or modifying resolutions of the City Planning Commision recommending changes in the Zoning Resolution where protests thereon have been presented to the Secretary of the Board of Estimate within 30 days from the date of the filing of such recommendations by the City Planning Commission, such protests duly signed and acknowledged by the owners of 20 per cent or more of the areas of: (1) the land included in such proposed changes; or (2) the land immediately adjacent extending 100 feet therefrom; or (3) the land, if any, directly opposite thereto extending 100 feet from the street frontage of such opposite land. (Section 200, New York City Charter.)

(g) Authorizing zoning changes certified as necessary by the Mayor to the City Planning Commission and which have been disapproved by the City Planning Commission. (Section 200, New York City Charter.)

(h) Authorizing exchange of lands of The City of New York for lands of private owners within the same Borough. (Section 384-7.0, New York City Administrative Code.)

(i) Authorizing the Commissioner of Marine and Aviation to widen, open, construct, abandon or close any marginal street or avenue, which proposals have been disapproved by the City Planning Commission or found by it not to be in accordance with the Master Plan. (Section 703-c, New York City Charter.)

(j) Approving the terms of any lease of City-owned wharf property not sold at public auction duly advertised in THE CITY RECORD. (Section 707-a, New York City Charter.)

(k) Approving the terms of a proposed lease of wharf property submitted by a proposed lessee and which are not recommended by the Commissioner of Marine and Aviation, provided such approval is granted at the meeting of the Board at which the proposed lease shall have been presented or at any one of its three regular meetings next succeeding thereto. (Section 707-c, New York City Charter.)

(l) Authorizing the sale of market property. (Section 384-5.0, New York City Administrative Code.)

14. A two-thirds vote is required in the following instances:

(a) Suspension of these rules at any meeting by a two-thirds vote of all members present. (Section 65, New York City Charter.)

(b) Authorizing the purchase of patented articles other than medical or surgical specialties, for which competition cannot be secured. (Section 348, New York City Charter.)

(c) Approving expenditures in excess of two thousand five hundred dollars without public letting. (Section 343-a, New York City Charter.)

(d) Approving award of contracts to other than the lowest responsible bidder.

(Section 343-b, New York City Charter.)

(e) Waiving minimum wage and other stipulations in contracts of the City for supplies, materials, equipment, work, labor or services. (Section 343-9.0(d), New York City Administrative Code.)

(f) A two-thirds vote of the Board (other than the Mayor) overriding vetoes of the Mayor on changes made by the Board in the Capital Budgets and Expense Budgets as originally submitted by the Mayor pursuant to Chapters 6 and 9 of the New York City Charter. (Sections 121-c and 223-c New York City Charter.)

(A unanimous, four-fifths, three-quarters, two thirds or majority vote shall be required in other instances as required by law.)

15. Members of the Board of Estimate and City employees designated by the Board shall be the only persons assigned within the guard rail of the dais during meetings of the Board or its committees.

16. Members of the Board shall be addressed in the third person and by title only.

17. (a) At public hearings those opposed to a proposition shall be heard first and then those in favor thereof, unless otherwise ordered by the Chairman of the Board.

(b) The Board, either prior, at the commencement of, or during the course of, any public hearing may establish a limit upon the time available to each member of the public for speaking at a public hearing, whenever the Board deems this necessary for the proper and orderly performance of its functions and for the convenience of the public. The Board may also, in its discretion, establish a general rule, pertaining to limits upon time available to speakers, applicable to all public hearings before the Board.

18. The order of business before the Board shall be as follows:

(a) Roll Call

(b) Approval of minutes of previous meetings.

(c) Public hearings (including hearings adjourned).

(d) Matters laid over on which public hearings have been closed or on which public hearings are not required.

(e) Reports:

From standing Committees;

From select and special committees;

From the Mayor;

From the Office of the Comptroller;

From the Bureau of the Board;

From City, Borough, County and State officials.

(f) Communications, petitions and resolutions for consideration by the Board; or to be referred to Bureaus of the Board, to Committees of the Board or to City Officials:

(a) From citizens and public bodies;

(b) From City, Borough, County and State officials

(g) Calendar—New York City Employees' Retirement System.

(h) Calendar—Health Department Retirement Fund.

19. The standing committees of the Board shall be as follows:

(a) The Committee of the Whole—which shall consist of all the members of the Board and shall meet at the call of the Mayor.

(b) The Committee on Acquisition and Disposition of City Property, which committee shall consist of the Mayor, the Comptroller and the President of the Council. All matters involving the acquisition and disposition of City property may be referred to such committee for report prior to action by the Board.

(Temporary or permanent chairmen of such committees shall be designated by the Mayor.)

20. All special and select committees shall be appointed by the Chair, unless otherwise ordered by members of the Board casting at least 12 votes.

21. Meetings of the committees shall be subject to the call of the respective chairmen.



22. All committee reports presented to the Board shall be signed by a majority of the committee, unless otherwise ordered by the Committee. However, a minority report may be presented and shall be part of the record.

23. Reports made to the Board by committees or agencies shall be in writing, with a statement of facts and conclusions. Such reports shall also state the date when the subject matter was referred to the committee or agency and the calendar number of such reference. Where such reports contain recommendations for action by the Board they shall be accompanied by proposed resolutions designed to effect such recommendations.

24. Matters which have been referred to a committee shall not be acted upon by the Board until such committee has either reported on the matter or such committee has been discharged from further consideration thereof by the Board.

25. A matter pending in committee may be withdrawn therefrom by members of the Board casting at least 12 votes, or such committee may in like manner be discharged from further consideration thereof.

26. All reports upon references shall constitute a part of the record of the proceedings of the Board.

## BUREAUS OF THE BOARD

27. The Bureaus of the Board shall be as follows (Section 68, New York City Charter):

Bureau of the Secretary
Bureau of Franchises
Bureau of Retirement and Pensions

28. The above Bureaus shall submit reports on matters referred to them by the Board and shall render all technical and clerical advice and assistance directed or called for by the Board, its members or its several committees.

## CALENDARS AND MINUTES OF PROCEEDINGS

29. Every communication, petition and resolution addressed and presented to the Board by a member of the Board shall be printed on the Calendar. Other communications, petitions and Resolutions requiring action by the Board pursuant to law, shall be listed upon the Calendar in accordance with the rules of the Board. Unless acted on, laid over, referred back or withdrawn, matters on the Calendar shall be referred by the Chair to an appropriate standing committee, to a special committee if so directed by the Board, to the head of a department, a Bureau of the Board or otherwise for consideration and report.

30. The Secretary shall prepare and cause to be printed a Calendar of the business to be presented and considered at each meeting of the Board. The matters thereon shall be arranged in the order prescribed by the "Order of Business" described in these rules. The Secretary shall also keep a record of undetermined matters which have been laid over or are pending in the several standing and special committees of the Board or referred to heads of departments, etc., and not yet reported on, and all communications, etc., pertinent thereto; also applications involving the laying of water mains and other subsurface structures in City streets as to their relation to rapid transit routes and construction.

31. The Secretary shall close the Calendar at 12 o'clock noon seven days prior to the scheduled meetings of the Board.

32. In January of each year the Secretary shall furnish each member of the Board with a list of all matters which have been referred to a committee, head of a department or otherwise and on which reports have not been made to the Board.

## GENERAL RULES

33. All communications, petitions and reports intended for the Board's consideration and action shall be addressed to the Board and delivered to the Bureau of the Secretary at least seven days before the meeting at which they are to be presented.

34. All communications and reports directed to the Board (by its committees or heads of departments) shall consist of an original accompanied by thirteen copies thereof, except reports of the Comptroller recommending the cancellation of taxes, assessments

or water rents on properties entitled to tax exemption, and except reports of the Commissioner of Real Estate on leases, renewals of leases or payments of rents of properties for municipal purposes where the annual rentals do not exceed one thousand dollars, and on the sale and demolition of encroachments on City-owned properties.

35. Copies of all communications, petitions and reports addressed to the Board for its consideration and action at meetings of the Board shall be sent by the Secretary to the members at least two days before the scheduled meetings of the Board at which they are to be considered. On default of such delivery, action shall be deferred by the Board upon the request of any member of the Board. Provisions of this paragraph shall not apply to reports of the Comptroller recommending cancellation of taxes, assessments or water rents on properties entitled to exemption, and shall not apply to reports of the Commissioner of Real Estate on leases, renewals of leases or payments of rents of properties for municipal purposes where the annual rentals do not exceed one thousand dollars and on the sale and demolition of encroachments on City-owned properties.

36. Petitions for franchise rights and privileges and applications for revocable permits for the occupancy of streets or the subsurface thereof shall be made to the Board in duplicate and verified, and shall set forth in full the facts in regard to and the reasons for the application.

37. The Secretary shall cause the proceedings of each meeting of the Board to be printed in THE CITY RECORD and shall thereafter cause the same to be printed and bound in volumes of convenient size, with an index thereto. Copies thereof shall be furnished to the members of the Board.

38. The Secretary shall transmit to the Mayor certified copies of the resolutions of the Board requiring the Mayor's separate approval and, when such resolutions have been approved the Secretary shall so report to the Board at its next meeting.

39. The Secretary shall transmit to the City, Borough and County departments, agencies or officials certified copies of all resolutions adopted by the Board affecting such agencies or officials.

40. Within 30 days after receipt of a communication from the Mayor pursuant to Section 228-a of the Charter, the Secretary of the Board shall publish in THE CITY RECORD a notice of public hearing not less than 10 days prior to date of said public hearing.

A true copy of resolution adopted by the Board of Estimate on January 25, 1968.

Ruth W. Schaley

*Secretary.*



# BOARD OF ESTIMATE
## CITY OF NEW YORK

(Cal. No. 34)

Resolved, By the Board of Estimate, that the Rules of Procedure for the Conduct of the Business of the Board adopted on January 25, 1968 (Cal. No. 18), and subsequently amended, are further amended by amending Rule 37 to read as follows:

37. The Secretary shall cause the proceedings of each meeting of the Board to be printed by THE CITY RECORD pursuant to Board rules, and shall thereafter cause the same to be bound in volumes of a convenient size, with an index thereto. Copies thereof shall be furnished to the members of the Board.

A true copy of resolution adopted by the Board of Estimate on FEBRUARY 11, 1971.

Ruth W. Schaley

*Secretary*

**Supplemental Affidavit of Professor Heywood T. Sanders, Read in Support of Plaintiffs' Motion for Summary Judgment, dated April 7, 1982**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

81 Civ. 3920 (E.R.N.)

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BEVERLY MORRIS; JOY CLARKE HOLMES; JOANNE OPLUSTIL,

*Plaintiffs,*

—against—

THE BOARD OF ESTIMATE, THE CITY OF NEW YORK, EDWARD I. KOCH, individually and as Mayor of New York, CAROL BELLAMY, individually and as City Council President, HARRISON J. GOLDIN, individually and as Comptroller for the City of New York, HOWARD GOLDEN, ANDREW STEIN, STANLEY SIMON, DONALD MANES, ANTHONY GAETA, each individually and as Borough Presidents of the boroughs of the City of New York,

*Defendants,*

FRANK V. PONTERIO,

*Applicant for Intervention.*

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Richard Emery
Arthur Eisenberg
New York Civil Liberties Union
84 Fifth Avenue
New York, NY 10011
(212) 924-7800

*Counsel for Plaintiffs*



*Supplemental Affidavit of Professor Heywood T. Sanders*

I, HEYWOOD T. SANDERS, DO HEREBY SWEAR AND DEPOSE THAT

1. I hold the Ph.D. in political science from Harvard University, and have taught urban politics and government at the University of Illinois for the past six years. I have conducted research on the organization and functions of urban government, and have authored articles on the subject, most recently for the 1982 *Municipal Yearbook*. I am currently a guest scholar at the Brookings Institution, Washington, D.C.

2. I have examined the report by Werner Kramarsky on the powers and functions of the Board of Estimate, as well as other historical materials on the Board's evolution and activities.

3. The New York City Board of Estimate has had a long and complex history. Under the Tweed charter of 1870, it functioned as a device for centralizing machine control of the city and ensuring its political dominance. The Board of Estimate and Apportionment created by the 1873 Charter was specifically designed as a fiscal watchdog to prevent the misuse of budgetary and bond issuance powers rampant under Tweed. As Griffith notes, "it was kept in later charters as it was found to have possibilities in the v y of fixing responsibility not heretofore realized under the old methods." [Ernest S. Griffith, *The Modern Development of City Government*, 1927] The consolidation of greater New York in 1898 further enlarged the political as well as legal functions of the Board, by providing a forum for the borough presidents on larger policy issues. By 1926, Thomas Reed could note that "the real municipal legislature is not the Board of Alderman, but the Board of Estimate and Apportionment" and that "(t)he real im-

portance of the borough, however, is as a representative district." [Thomas Reed, *Municipal Government in the United States,* 1926]

The continuous historical existence has resulted in the Board's absorbtion of a variety of powers and authorities which might well have been placed in a different or newly created body. Cases in point are the 1905 shift of control over franchises to the Board, and the assumption of power over street improvements and assessments in 1911. The trend of the early 1900s was to shift such authority from independent boards or commissions often created under state law during the latter part of the 19th century to a more general city body, the council or commission.

The complex history of the Board of Estimate has resulted in a contemporary body which exercises a variety of authorities. In its power to grant leases on city property, transfer control of property among agencies, and designate land for specific purposes such as markets and recreation, the Board clearly resembles the general legislative body in other communities. In some narrow cases, such as authority over wharves or parks, other cities vest power in limited purpose boards or commissions, or special purpose public authorities.

The Board's responsibility for public improvements, sidewalk paving and the like grows out of the 19th century Board of Street Opening and Improvements. While such entities were not uncommon in the 19th century, they generally fell victim to a desire for a smaller, more responsible, local government with greater executive powers. Cities today vest authority for such public improvement in the city council. For example, the Cleveland City Council must specifically name by resolution those streets where sidewalks are to be repaired or improved.



The disposition of city-owned or acquired real property commonly is a function of the local city council. The responsibility for approving plans for urban renewal projects which the Board of Estimate exercises has been fixed in other locales by state law. Prior to 1974, these powers were generally granted to *either* the city council or to an independent board or public authority. The passage of the Housing and Community Development Act of 1974 altered the arrangements for federal assistance such that urban renewal authority is vested in general purpose city government, and exercised by local legislative bodies.

The Board of Estimate's responsibilities for planning functions, including changes in the city map, zoning, and subdivision planning do not follow the national practice. Such activities have generally been located in independent boards, while allowing for the possibility of some final review by the general city legislative body. Other elements of the Board's authority, such as its control over space under and above public streets, more clearly follow traditional legislative powers.

Authority for letting and regulating public contracts varies considerably across cities. In many cities in the east and midwest, this authority is vested in a committee of executive officials, generally including the mayor, city comptroller, city attorney, and other departmental officials. Many of these bodies were modelled on the New York City Board of Estimate and were intended to serve as financial watchdogs. The practice in new cities, particularly those with the city manager plan, has been to allow the manager full authority for contracts, subject to oversight by the legislative body. It is thus impossible to define a clear cut distinction between legislative and executive power in such matters. The Board's responsibility for the granting

of franchises is common to the legislative bodies of almost all other cities, and historically has been seen as a legislative function.

The Board of Estimate's role in the budget-making process is clearly a legislative one. Responsibility for fixing and altering items in both capital and operating budgets is invariably fixed in the city council or commission in American cities. A sharing of responsibility for the capital budget with the local planning commission was also a common part of local government procedure, although as practice has become less common with the reduction in the incidence of independent planning commissions.

New York City's Board of Estimate has no precise analogue in other cities, as it constitutes the last example of a "bicameral" local legislature. Nonetheless, it is evident that the Board exercises what are largely legislative functions in other communities. These functions are typical of general purpose local governments in the United States.

/s/ Heywood T. Sanders
Heywood Sanders

Subscribed and Sworn to before me this 7th day of April, 1982.

/s/ Madeline J. Kramer
Notary Public
My Commission Expires September 30, 1983



## AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT
Eastern District of New York
81-CV-3920

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Beverly Morris, et al.,
*Plaintiffs,*

—v—

The Board of Estimate, et al.,
*Defendants.*

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State of New York,
County of New York, ss.:

I, Kathleen Durkin, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 84 Fifth Ave., NY NY 10011. On April 8, 1982 deponent served two copies of the within Professor Heywood T. Sanders' Supplementary Affidavit in Support of Plaintiffs' Motion for Summary Judgment upon Judy Levitt, Corporation Counsel and Counsel for Defendants in this action, at 100 Church St., NY NY the address designated by said attorney for that purpose, and one copy upon Frank V. Ponterio, pro se, at 766 Pelton Ave., S.I., NY, the address designated by said property, by depositing true copies of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
8th day of April, 1982.

/s/ Kathleen Durkin
Kathleen Durkin

/s/ Robert Levy
Notary Public

**Affidavit of Frank V. Ponterio, Read in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Intervenor-Defendant's Motion to Strike Affidavits Submitted by Plaintiffs, filed April 30, 1982**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

81-CV-3920 (E.R.N.)

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BEVERLY MORRIS, JOY CLARKE HOLMES, JOANNE OPLUSTIL,

*Plaintiffs,*

—against—

THE BOARD OF ESTIMATE, THE CITY OF NEW YORK, EDWARD I. KOCH, individually and as Mayor of New York, CAROL BELLAMY, individually and as City Council President, HARRISON J. GOLDIN, individually and as Comptroller for the City of New York, HOWARD GOLDEN, ANDREW STEIN, STANLEY SIMON, DONALD MANES, ANTHONY GEATA, each individually and as Borough Presidents of the Boroughs of the City of New York,

*Defendants,*

FRANK V. PONTERIO,

*Intervenor-Defendant.*

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FRANK V. PONTERIO, pro se
Intervenor-Defendant
766 Pelton Avenue
Staten Island, New York 10310
(212) 981-7953



*Affidavit of Frank V. Ponterio in Opposition to Motion*

State of New York,
County of Richmond, ss.:

FRANK V. PONTERIO, an attorney duly licensed to practice law in the State of New York, being duly sworn, deposes and says:

1. I am a resident and a registered and qualified voter of the Borough of Staten Island, City and State of New York, County of Richmond.

2. I hold the Bachelor of Electrical Engineering and Master of Science degrees from the Polytechnic Institute of Brooklyn (now of New York), awarded in 1952 and 1964 respectively.

3. I am a licensed professional engineer in New York (since 1965) and am currently a director of the Richmond County Chapter, New York State Society of Professional Engineers.

4. I have been employed as an engineer and analyst by the Sperry Corporation for over 27 years. For the past 20 years I have been engaged in performing complex mathematical analyses in a variety of scientific disciplines.

5. This affidavit and accompanying memorandum of law are submitted in opposition to plaintiffs' motion for summary judgment and in support of my motion to strike the affidavits of Werner Kramarsky and Heywood T. Sanders, submitted by Plaintiffs.

6. Summary judgment is not appropriate in this action, even if the Court finds that the one person, one vote principle of the 14th Amendment of the United States Constitution applies to the New York City

Board of Estimate, because extensive factual and expert opinion would be required to determine how such principle should be applied to so complex and unique a body as the Board of Estimate.

7. The simple mathematical analyses and tests used by the Courts in the 18 years since the *Reynolds* v. *Sims* decision and relied upon by plaintiffs are wholly inapplicable to overlapping single and multi-member representation of political subdivisions and lead to clearly erroneous and unconstitutional results.

8. The analysis propounded by plaintiffs purporting to apply the one person, one vote principle is clearly erroneous in that it would grant to the Borough President of Brooklyn a weighted vote (1.58 votes) equal to 79% of the weighted vote (2 votes) of one of the city-wide members, viz., the Mayor, Comptroller, City Council President, even though such Borough President represent only 31.55% of the people represented by each city-wide member (i.e., the Brooklyn Borough President represents 2,230,936 people, and each city-wide member represents 7,071,030 people). Plaintiffs' erroneous application of its own argument underscores the inappropriateness of summary judgment in this action.

9. I oppose the application of the one person, one vote principle to the Board of Estimate and the use of equivalent "districts" to devise alleged equal representation proportional to "district" populations by weighted voting schemes. However, if the court holds that such principle applies and that weighted



votes based on equivalent "district" populations are required, any such plan must be based on allocation of votes such that the sum of the five (5) Borough Presidents' votes equal the vote of one city-wide member (2 votes) and all city-wide members must have the same vote.

10. Aside from being otherwise erroneous, plaintiffs' weighted voting scheme would give to Brooklyn a power to control outcomes of votes of the Board of Estimate far in excess of its deserved power based on its population. Exhibit I presents analysis of every theoretically-possible vote outcome of an 8-member Board of Estimate. That analysis demonstrates, among other things that, in every case where borough votes would be of any importance at all in achieving a majority, Brooklyn, acting alone, holds an absolute veto power, (i.e., where only one city-wide member votes in favor) or is decisive (i.e., where two city-wide members vote in favor). To the extent that Brooklyn would wield such undeserved power, all 4 other boroughs, especially Staten Island, would be disenfranchised.

11. That power to affect voting outcomes must be considered in any voting scheme for the Board of Estimate is even more graphically shown in Exhibit I which applies plaintiffs' weighted voting to the five (5) boroughs based upon the 1970 census population figures. In that case, Staten Island's vote would never have counted. Its vote would never be needed to achieve a majority, and, if withheld, could never deny a majority. Under those circumstances Staten Island would not, even by plaintiffs' argu-

ment, enjoy a percent representation proportional to its population but would be totally disenfranchised. This analysis demonstrates that simple-minded voting schemes are not appropriate for complex situations and in fact can create a greater evil than they are intended to correct.

12. The affidavit and exhibits of Werner Kramarsky are incompetent, irrelevant, and immaterial and should be stricken by the court. Mr. Kramarsky's alleged personal knowledge applies to a period of time 12 to 15 years ago by his own admission and his affidavit does not even allege that such knowledge is applicable to the present. His affidavit is replete with unsupported conclusory statements and barren of relevant and material facts. His study of the Board of Estimate, Exhibit A, recounts a history of the Board and comments on theoretical and hypothetical questions relating to the functions and powers of the Board, all of which is irrelevant and immaterial in this action. The analysis of Board calendars relates to the year 1971 with no indication of relevance to the present and reflects a voting scheme in which there were a total of 22 votes whereas the Board currently has a total of 11 votes. Appendix B of Exhibit A is a copy of the Board's Rules of Procedure but it too is out of date, not reflecting changes made in 1975, 1978, and 1980. Furthermore, Mr. Kramarsky's affidavit is self-contradictory. Although offered in support of plaintiffs' argument that the Board exercises such powers and is of such a nature as to be required to conform to the one person, one vote principle, Mr. Kramarsky



states "Obviously, the great majority of issues before the Board are of negligible interest to the general public . . .", Kramarsky affidavit, Appendix A at 20, and "The relatively low turnout for public hearings is primarily due to the nature of the Board's business. The majority of decisions which the Board makes deal with matters of governmental rather than public controversy", *Id.* at 24, 25. Mr. Kramarsky's affidavit is also offered in support of plaintiffs' proposed weighting scheme which plaintiffs allege provides a constitutionally acceptable representation to the five (5) boroughs based upon their respective populations. However, Mr. Kramarsky himself emphatically denies this by stating "In any case, keeping control of the Board with its city-wide members and reapportioning the Borough Presidents' votes according to population would reduce the Borough President of Staten Island to the status of an observer in the Board's deliberations", *Id.* at 116, 117. Mr. Kramarsky testifies in this action as the New York State Commissioner of Human Rights as set forth in paragraph 1 of his affidavit. As such his testimony is incompetent in that it is beyond the scope of his authority as Commissioner to testify as to the nature of municipal governments.

13. The affidavit of Heywood T. Sanders is incompetent, irrelevant, and immaterial, and should be stricken by the court. Professor Sanders' affidavit is nothing more than an academician's musing and is devoid of facts. Furthermore, Professor Sanders neither demonstrates nor even alleges any personal knowledge

of the New York City Board of Estimate and avers only that he has read the Kramarsky report and other historical materials. This hardly qualifies Professor Sanders either as a lay witness with personal knowledge or an expert witness qualified to testify specifically on the Board of Estimate as it exists and functions today.

/s/ Frank V. Ponterio
Frank V. Ponterio

Subscribed and sworn to
before me this
day of April 1982



**Notice of Cross Motion for Summary Judgment, dated May 24, 1982**

UNITED STATES DISTRICT COURT

Eastern District of New York

81 Civ. 3920 (ERN)

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Beverly Morris; Joy Clarke Holmes; Joanne Oplustil,

*Plaintiffs,*

—against—

The Board of Estimate, The City of New York, Edward I. Koch, individually and as Mayor of New York, Carol Bellamy, individually and as City Council President, Harrison J. Goldin, individually and as Comptroller for the City of New York, Howard Golden, Andrew Stein, Stanley Simon, Donald Manes, Anthony Geata, each individually and as Borough Presidents of the Boroughs of the City of New York,

*Defendants,*

Frank V. Ponterio,

*Intervenor-Defendant.*

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To All Counsel:

Please Take Notice that, upon the annexed counter-statement of facts pursuant to Local Rule 3(g) dated May 24, 1982, the accompanying Memorandum of Law and upon all the prior papers and proceedings heretofore had herein, defendants will cross-move this Court before the Honorable Edward R. Neaher, United States District Judge, at the

*Notice of Cross-Motion for Summary Judgment*

United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York on the 11th day of June, 1982, at 10:30 A.M., or as soon thereafter as counsel may be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting defendants summary judgment on the grounds that there is no genuine issue as to any material fact as set forth in the complaint, and that defendants are entitled to summary judgment as a matter of law, and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
May 24, 1982

FREDERICK A. O. SCHWARZ, JR.
Corporation Counsel of the
City of New York
*Attorney for Defendants*
100 Church Street
New York, N.Y. 10007
By: /s/ JUDITH A. LEVITT
Judith A. Levitt
Assistant Corporation Counsel



**Defendants' Counter-Statement of Facts Pursuant to Rule 3(g), dated May 28, 1982**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

81 Civ. 3920 (ERN)

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BEVERLY MORRIS; JOY CLARKE HOLMES;
JOANNE OPLUSTIL,

*Plaintiffs,*

—against—

THE BOARD OF ESTIMATE, THE CITY OF NEW YORK, EDWARD I. KOCH, individually and as Mayor of New York, CAROL BELLAMY, individually and as City Council President, HARRISON J. GOLDIN, individually and as Comptroller for the City of New York, HOWARD GOLDEN, ANDREW STEIN, STANLEY SIMON, DONALD MANES, ANTHONY GEATA, each individually and as Borough Presidents of the Boroughs of the City of New York,

*Defendants,*

—and—

FRANK V. PONTERIO,

*Intervenor-Defendant.*

---

Defendants submit the following statement of facts in support of their cross-motion for summary judgment. Defendants contend that there are no material facts as to which there exists a genuine issue to be tried with respect to the complaint, and that the following undisputed facts establish that defendants are entitled to summary judgment in their favor as a matter of law.

*Defendant's Counter-Statement of Facts Pursuant to Rule 3(g), dated May 28, 1982*

1. Defendants do not controvert the statement of fact contained in paragraphs "1" through "8" and "10" through "15."

2. The New York Court of Appeals in *Bergerman* v. *Lindsay*, 25 N.Y. 2d 405 (1969), *appeal dismissed and cert. denied*, 389 U.S. 955 (1970) held the one person, one vote principle inapplicable to the New York City Board of Estimate.

3. The Court of Appeals in *Bergerman* concluded that the New York City Board of Estimate was not the duly elected legislative body of the City of New York and that it did not exercise general governmental powers.

Dated: New York, New York
May 24, 1982

Respectfully submitted,

FREDERICK A. O. SCHWARZ, JR.
Corporation Counsel of the
City of New York
*Attorney for Defendants*
100 Church Street
New York, N.Y. 10007
(212) 566-2091/2139
By: /s/ JUDITH A. LEVITT
Judith A. Levitt
Assistant Corporation Counsel



**Plaintiffs' Answer to Defendants' First Set of Interrogatories, dated May 28, 1982**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

81 Civ. 3920 (E.R.N.)

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BEVERLY MORRIS; JOY CLARKE HOLMES;
JOANNE OPLUSTIL,
*Plaintiffs,*

—v—

THE BOARD OF ESTIMATE, et al.,
*Defendants.*

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1. Are there any available alternative methods of preserving borough representation on the defendant Board of Estimate which plaintiffs believe would give them an equal representative share on the Board of Estimate?

Yes.

2. If so, specifically describe each alternative plan contemplated by plaintiffs, including for each plan the proposed number of votes and the proposed weight of the votes of the members of the Board of Estimate.

a) the Mayor of the City of New York,

b) the Comptroller of the City of New York,

c) the President of the New York City Council,

d) the Borough President of Manhattan,

e) the Borough President of the Bronx,

f) the Borough President of the Bronx,

g) the Borough President of Queens,

h) the Borough President of Staten Island.

Plans with fractional votes are unacceptable from plaintiffs' point of view. An acceptable plan to preserve enough representation would add representatives to the Board of Estimate from Brooklyn, Queens, Manhattan and the Bronx in proportion to the population of Staten Island which would maintain its one vote on the Board. The three city-wide officeholder members would have their votes increased to provide them with the bare majority they now control. The votes would be as follows:

| | |
|---|---|
| Brooklyn— | 6 representatives, one of whom is Borough President |
| Queens— | 5 representatives, one of whom is Borough President |
| Manhattan— | 4 representatives, one of whom is Borough President |
| The Bronx— | 3 representatives, one of whom is Borough President |
| Staten Island— | 1 representative, the Borough President |

Mayor—7 votes

Comptroller—7 votes

Council President—7 votes

21 Citywide votes

Total 40 votes





Norm population per Board of Estimate vote

$$\frac{7{,}071{,}030}{40 \text{ votes}} = 176{,}775$$

| | *City Wide Votes* | *Borough Vote Total* |
|---|---|---|
| Brooklyn | 6.63 | 6 = 12.63 |
| Queens | 5.62 | 5 = 10.62 |
| Manhattan | 4.24 | 4 = 8.24 |
| Bronx | 3.47 | 3 = 6.47 |
| Staten Island | 1.06 | 1 = 2.06 |

Population per Board of Estimate vote, by borough

| | |
|---|---|
| Brooklyn | 176,637.8 |
| Queens | 178,090.0 |
| Manhattan | 173,244.2 |
| Bronx | 180,697.8 |
| Staten Island | 170,932.5 |

Deviations from norm population per Board of Estimate vote 176,775.0

| | |
|---|---|
| Brooklyn | .00% |
| Queens | — .74% |
| Manhattan | + 1.99% |
| Bronx | — 2.22% |
| Staten Island | + 3.31% |
| Total Deviation | ± 5.53% |

Richard Emery
New York Civil Liberties Union
84 Fifth Avenue
New York, NY 10011
(212) 924-7800
*Attorney for Plaintiffs*

Dated: May 28, 1982
New York, New York

**Affidavit of Frank V. Ponterio, Read in Support of Motion to Deem Issues Resolved, dated September 30, 1983**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
81-CV-3920 (E.R.N.)

---

BEVERLLY MORRIS, JOY CLARKE HOLMES, JOANNE OPLUSTIL,

*Plaintiffs,*

—against—

THE BOARD OF ESTIMATE, THE CITY OF NEW YORK, EDWARD I. KOCH, individually and as Mayor of New York, CAROL BELLAMY, individually and as City Council President, HARRISON J. GOLDIN, individually and as Comptroller for the City of New York, HOWARD GOLDEN, ANDREW STEIN, STANLEY SIMON, DONALD MANES, ANTHONY GAETA, each individually and as Borough Presidents of the Boroughs of the City of New York,

*Defendants,*

FRANK V. PONTERIO and ROBERT STRANIERE,

*Intervenor-Defendants.*

---

Dated: September 30, 1983

FRANK V. PONTERIO, pro se
*Intervenor-Defendant*
766 Pelton Avenue
Staten Island, New York 10310
(212) 981-7953



*Affidavit of Frank V. Ponterio in Support of Motion*

State of New York
County of Richmond ss.:

FRANK V. PONTERIO, an attorney duly licensed to practice law in the State of New York, being duly sworn, deposes and says:

1. I am a resident and a registered and qualified voter of the Borough of Staten Island, City and State of New York, County of Richmond.

2. I hold the Bachelor of Electrical Engineering and Master of Science degrees from the Polytechnic Institute of Brooklyn (now of New York), awarded in 1952 and 1964 respectively.

3. I am a licensed professional engineer in New York (since 1965) and I am a member and former director of the Richmond County Chapter, New York State Society of Professional Engineers.

4. I have been employed as an engineer and mathematical analyst by the Sperry Corporation for 29 years. For the past 22 years I have been engaged in performing complex mathematical analyses in a variety of scientific disciplines.

5. This affidavit and accompanying memorandum of law are submitted in support of my motion to deem issues resolved.

6. The Board of Estimate ("Board") is unlike any other governmental body subjected to scrutiny by the Courts in apportionment cases with regard to its composition, history, functions, and voting rules. As a consequence, the

simple mathematical tests used by the Courts since the *Reynolds** decision in 1964 and, in particular, the *Abate*** test proffered upon initial proceedings in this Court and upon appeal by plaintiffs, are inappropriate in this case and, if applied, would subvert rather than uphold Equal Protection principles.

7. Upon appeal of the decision of this Court that the Board was not subject to one person, one vote principles, plaintiffs-appellants asked the U.S. Court of Appeals for the Second Circuit to direct entry of summary judgment based upon a reiteration of plaintiffs' strained application of the *Abate* test to the Board which purported to show a facially unconstitutional malapportionment. The Second Circuit rejected plaintiffs' plea and directed this Court to:

a) Devise an appropriate methodology for analyzing apportionment on the Board.

b) Employ such methodology to measure the degree of malapportionment of the Board and

c) Rule on the policies and interests which the Supreme Court has held may justify deviations from the literal one person, one vote formula.

8. The key flaws in the *Abate* percent deviation methodology are its inability to treat the Board's overlay of city-wide and borough votes or to account for the interplay of this overlay and the Board's specific voting rules. Plaintiffs attempted to adapt the *Abate* methodology to the Board by apportioning the 6 city-wide votes among the

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* *Reynolds* v. *Sims*, 377 U.S. 533 (1964).

** *Abate* v. *Mundt*, 403 U.S. 182 (1971).



boroughs in linear proportion to borough populations. There is no factual basis for making such an apportionment. Moreover, such an approach obscures the fact that, when a city-wide member votes, *all* of the people of the City are represented.

9. A compelling case for rejecting application of the *Abate* methodology to the Board, even as adapted by plaintiffs, is made out by several examples. It is revealing to examine the practical effect of the distribution of votes among the five towns scrutinized in *Abate* after the Court "cured" malapportionment found in *Lodico* v. *Board of Supervisors*, 256 F. Supp. 440 (S.D.N.Y. 1966). For simple majority votes, where each town either votes "Yes" or doesn't vote "Yes" (i.e., a "No" vote, an abstention, or not present), there are thirty-two possible vote outcomes. All are shown in Table I. Also indicated are those cases in which a majority is achieved (15 cases) and whether, in those cases, a town's vote is decisive (a decisive vote is one which, if deleted, would cause the total vote to fall below a majority). Obviously, a vote which is not decisive plays no part in achieving or denying a majority and is therefore no vote at all. Table II shows that, in terms of vote outcomes, the larger towns have a power greatly in excess of their proportion of total population. In particular, Orangetown with a population only about twice that of Haverstraw has a power to determine outcomes seven times that of Haverstraw. Clearly indicated is theoretical conclusion arrived at by Banzhaf* that equal *per capita* representation applied to districts of widely disparate populations leads to over-representation of the larger dis-

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* Banzhaf, John F., "Multi-Member Electoral Districts—Do They Violate the 'One Man, One Vote' Principle", 75 Yale L.J. 1309.

TABLE I

| | | | | | | | Decisive Votes | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Stony Point | Haver straw | Orange town | Clark town | Ramapo | Majority Achieved | Stony Point | Haver straw | Orange town | Clark town | Ramapo |
| votes | 1 | 2 | 4 | 5 | 6 | | | | | | |
| 1 | | | | | | | | | | | |
| 2 | | | | | Y | | | | | | |
| 3 | | | | Y | | | | | | | |
| 4 | | | | Y | Y | Y | | | | Y | Y |
| 5 | | | Y | | | | | | | | |
| 6 | | | Y | | Y | Y | | | Y | | Y |
| 7 | | | Y | Y | | | | | | | |
| 8 | | | Y | Y | Y | Y | | | | Y | Y |
| 9 | | Y | | | | | | | | | |
| 10 | | Y | | | Y | | | | | | |
| 11 | Y | | Y | | | | | | | | |
| 12 | | Y | | Y | Y | Y | | | | Y | Y |
| 13 | | Y | Y | | | | | | | | |
| 14 | | Y | Y | | Y | Y | | | Y | | Y |
| 15 | | Y | Y | Y | | Y | | Y | Y | Y | |
| 16 | | Y | Y | Y | Y | Y | | | | | |
| 17 | Y | | | | | | | | | | |
| 18 | Y | | | | Y | | | | | | |
| 19 | Y | | | Y | | | | | | | |
| 20 | Y | | | Y | Y | Y | | | | Y | Y |
| 21 | Y | | Y | | | | | | | | |
| 22 | Y | | Y | | Y | Y | | | Y | | Y |
| 23 | Y | | Y | Y | | Y | Y | | Y | Y | |
| 24 | Y | | Y | Y | Y | Y | | | | | |
| 25 | Y | Y | | | | | | | | | |
| 26 | Y | Y | | | Y | | | | | | |
| 27 | Y | Y | | Y | | | | | | | |
| 28 | Y | Y | | Y | Y | Y | | | | Y | Y |
| 29 | Y | Y | Y | | | | | | | | |
| 30 | Y | Y | Y | | Y | Y | | | Y | | Y |
| 31 | Y | Y | Y | Y | | Y | | | Y | Y | |
| 32 | Y | Y | Y | Y | Y | Y | | | | | |
| | | | | | Totals | 15 | 1 | 1 | 7 | 8 | 9 |
| | | | | | % of cases in which vote is decisive | | 6.67 | 6.67 | 46.67 | 53.33 | 60.00 |
| | | | | | % of total population | | 5.54 | 10.82 | 23.80 | 26.45 | 33.39 |

Note: Y indicates Yes

TABLE II

| | Stony Point | Haver straw | Orange town | Clark town | Ramapo | Majority Achieved | Decisive Votes: Stony Point | Haver straw | Orange town | Clark town | Ramapo |
|---|---|---|---|---|---|---|---|---|---|---|---|
| votes | .997 | 1.948 | 4.284 | 4.762 | 6.009 | | | | | | |
| 1 | | | | | | | | | | | |
| 2 | | | | | Y | | | | | | |
| 3 | | | | Y | | | | | | | |
| 4 | | | | Y | Y | Y | | | | Y | Y |
| 5 | | | Y | | | | | | | | |
| 6 | | | Y | | Y | Y | | | Y | | Y |
| 7 | | | Y | Y | | | | | | | |
| 8 | | | Y | Y | Y | Y | | | | | Y |
| 9 | | Y | | | | | | | | | |
| 10 | | Y | | | Y | | | | | | |
| 11 | Y | | Y | | | | | | | | |
| 12 | | Y | | Y | Y | Y | | | | Y | Y |
| 13 | | Y | Y | | | | | | | | |
| 14 | | Y | Y | | Y | Y | | | Y | | Y |
| 15 | | Y | Y | Y | | Y | | | Y | Y | |
| 16 | | Y | Y | Y | Y | Y | | | | | |
| 17 | Y | | | | | | | | | | |
| 18 | Y | | | | Y | | | | | | |
| 19 | Y | | | Y | | | | | | | |
| 20 | Y | | | Y | Y | Y | | | | Y | Y |
| 21 | Y | | Y | | | | | | | | |
| 22 | Y | | Y | | Y | Y | | | Y | | Y |
| 23 | Y | | Y | Y | | Y | | | Y | Y | |
| 24 | Y | | Y | Y | Y | Y | | | | | |
| 25 | Y | Y | | | | | | | | | |
| 26 | Y | Y | | | Y | | | | | | |
| 27 | Y | Y | | Y | | | | | | | |
| 28 | Y | Y | | Y | Y | Y | | | | | Y |
| 29 | Y | Y | Y | | | | | | | | |
| 30 | Y | Y | Y | | Y | Y | | | | | Y |
| 31 | Y | Y | Y | Y | | Y | | | Y | Y | |
| 32 | Y | Y | Y | Y | Y | Y | | | | | |
| | | | | | Totals | 15 | 0 | 0 | 6 | 6 | 9 |
| | | | | | % of cases in which vote is decisive | | 0 | 0 | 40.0 | 40.0 | 60.00 |
| | | | | | % of total population | | 5.54 | 10.82 | 23.80 | 26.45 | 33.39 |

Note: Y indicates Yes

tricts. It is even more enlightening to see what would have happened if the court in *Lodico* had "cured" the malapportioned perfectly, i.e., even if the marginally acceptable 11.9% deviation were eliminated by redistributing votes *exactly* proportional to population. Such a case is shown in Table II, again for all possible vote outcomes. Now, the one opportunity each for Stony Point and Haverstraw to affect a vote outcome has been eliminated. Both towns would be *completely disenfranchised.* For their residents, the principle applicable is one person, no vote. Significantly, the dubious acceptability of *Abate* as actually implemented is solely a function of the arbitrary *imprecision* in allocating votes among the towns.

The self-contradictory feature of the *Abate* test can be shown by the following examples. Table III shows an *Abate* analysis for the indicated hypothetical populations of the boroughs and for a Board in which the complicating feature of city-wide votes is absent. Staten Island is "over-represented" by 70%. Nevertheless, for a simple majority (11 out of 21 votes) no combination of votes relies upon Staten Island's one vote. Therefore, Staten Island has no vote. Quaere, is this scheme unconstitutional because Staten Island has excessive representation, or because Staten Island has no representation at all?

TABLE III

| Borough | Population | Votes | Norm District Population | Actual District Population | % Deviation |
|---|---|---|---|---|---|
| Brooklyn | 2,900,000 | 8 | 333,333 | 362,500 | — 8.75 |
| Queens | 2,000,000 | 6 | 333,333 | 333,333 | 0 |
| Manhattan | 1,000,000 | 3 | 333,333 | 333,333 | 0 |
| Bronx | 1,000,000 | 3 | 333,333 | 333,333 | 0 |
| Staten Is. | 100,000 | 1 | 333,333 | 100,000 | +70. |
| Totals: | 7,000,000 | 21 | | | 78.75 |



The weakness of the *Abate* test which can lead to such sinister results is its preoccupation with percents instead of persons and its complete disregard of the consequences of its use.*

10. Plaintiffs have suggested a recomposed Board in which there would be 19 borough members and the current city-wide members. The 19 borough members, each having one vote, would be apportioned 6 to Brooklyn, 5 to Queens, 4 to Manhattan, 3 to the Bronx, and 1 to Staten Island. In each case, one such member would be the borough president. To maintain approximately the same ratio of city-wide to borough voting power (6:5) plaintiffs' scheme would allocate 7 votes to each city-wide member. Accordingly, there would be a total of 40 votes, 21 city-wide, 19 borough. Plaintiffs' plan purports to conform almost exactly with one person, one vote requirements by allocating borough votes approximately in linear proportion to borough populations. Exhibits I and II show every voting combination respectively for the full Board and the mayorless Board, assuming bloc borough voting. Plaintiffs' selection of 7 votes for each city-wide member does not preserve the current ratio of city-wide to borough votes as well as a choice of 8 votes per city-wide member would. The current ratio is 6:5 or 1.2. Plaintiffs' choice yields a ratio of 21:19 or 1.105. Substitution of 8 votes per city-wide member yields a ratio of 24:19 or 1.263; a closer match, albeit not far different. If anything logic dictates that a larger ratio of city-wide to borough votes would tend to decrease

* An extreme example illustrates the point. If one voter in the U. S. were given 2 votes instead of 1, the result would be inconsequential, but the % deviation is 100%. If one-half of all voters in the U. S. were given 2 votes instead of 1, the result would be significant, but the % deviation is less, viz., 67%.

the relative voting power of the borough members vis-a-vis the city-wide members. The comparable voting combinations are shown in Exhibits III and IV. The mischief that can be worked by *Abate* thinking can be seen by comparing the totals at the foot of each of Exhibits I and III and Exhibits II and IV. Contrary to logical expectations, giving a higher proportion of votes to the city-wide members greatly *increases* the voting power of Brooklyn. For simple majorities, with 7 votes per city-wide member, Brooklyn's vote is decisive in 48 out of a total of 122 cases in which a simple majority is achieved. Again, as in *Abate* itself, a salient characteristic of an apportionment plan founded upon *Abate* thinking is solely the product of an arbitrary choice of the imprecision of the plan.

11. There is no technique known to mathematics or black magic which can be applied to a representative situation as complex as the Board's and lead to conclusions which are unequivocal. There is no one method for analyzing the Board's compliance with one person, one vote principles, because the common definition of such principles falls apart when applied to unique bodies like the Board. I have developed an analysis which both recognizes the Board's overlay of city-wide and borough votes and examines every voting rule under which the Board functions.

Both my proposed analysis and the plaintiffs' attempts to adapt the percent deviation test can best be understood by recognizing that the Board can be analogized to a floterial "district". A floterial district is a super-district consisting of two or more sub-districts. Each sub-district may have its own representatives, and the super-district itself has one or more representatives, essentially at-large representatives of all of the sub-districts. Floterial districts have been used in state legislative apportionment plans to



achieve equality of representation in situations where it is desired to equalize representation without altering existing boundaries of political sub-divisions. For example, suppose a legislature consists of 100 districts of various sizes and in 97 of these districts it is possible to allocate an integral number of legislators with acceptably small deviations of their population-per-legislator ratios from the norm. To be specific, let us assume a norm of 10,000. Further assume that each of the remaining 3 districts has a population of 14,000 and is allotted 1 legislator. In effect, each district is short four-tenths of a legislator. If left as individual districts, Districts A, B, and C would have relatively large deviations from the norm (40%).

Since the aggregate deficiency of legislators for Districts A, B, and C is about 1 legislator, the deviations can be reduced by creating a floterial district consisting of Districts A, B, and C, and allocating 1 legislator, at-large, to the floterial or super-district. The deviation is thereby reduced to 4.0%.

The Board may be looked upon as a single floterial district, the super-district being the City and the sub-districts the five boroughs. Each Borough President is a sub-district representative and the city-wide members are the super-district representatives.

Two methods have been used in apportionment cases to examine departures from ideal representation in floterial districts. The methods, which can yield significantly different results, are the "aggregate" method and the "shared" method. Plaintiffs' adaptation of the *Abate* test is little more than the shared method of analyzing floterial districts. In the shared method, the votes of the super-district representatives are shared among the sub-districts in proportion to the sub-district populations. Each sub-dis-

trict is considered to be represented by the total of its district representatives and its shares of the super-district representatives. Plaintiffs have performed such an analysis by 1) apportioning the six votes of the three city-wide members among the boroughs, 2) adding one vote per borough to account for its President's vote, then 3) examining the percent deviation of the population per vote for each borough against the overall City norm population per vote. As described *infra*, my analysis uses an adaptation of the aggregate method of analyzing floterial districts. In the aggregate method, there is no attempt to divide super-district representation among the sub-districts, proportionately or otherwise. The method avoids altogether the necessity for making unsubstantiatable assumptions about how such representatives divide themselves. Only an overall population-per-vote ratio is defined, viz., the total super-district population divided by the sum of sub-district and super-district votes. In a typical state legislative plan, this ratio is compared with similar ratios for other floterial districts as well as for single-member districts, and percent deviations calculated.

In order to adapt the aggregate method of analysis to the Board considered as a single floterial district, it is necesssary to make some accommodations. I begin by defining an ideal or norm, namely, a hypothetical Board of the same structure as the actual Board but one which all of the five boroughs have identical populations (i.e. 7, 071, $030 \div 5 = 1{,}414{,}206$). Clearly, if the five boroughs had identical populations and identical representation, every test would find it constitutionally perfect. Ordinarily, the quantity whose deviation is measured is a population-per-vote ratio. However, since the aggregate ratios for the actual and ideal Board are identical, a different measure



must be defined. The measure selected is an effective population represented in all combinations of the city-wide and borough votes, denoted as "weighted votes". Each city-wide member's vote is weighted by the population he represents (and from which he is elected) viz., the total city population of 7,071,030. Each Borough President's vote is weighted by his borough's population. In this way, the multiple representation of the city-wide members and the overlay of city-wide and borough representation are accommodated, i.e., if two city-wide members cast a "yes" vote, the entire city population is represented twice. If the Brooklyn Borough President joins in this vote, Brooklynites are represented three times, twice by the city-wide members and once by their Borough President. No assumptions need be made about how city-wide members divide their loyalties among the boroughs. Furthermore, unlike plaintiffs' initial analysis, this methodology focuses on representation of people, not voting power to boroughs. The current "votes" of Board members, 2 for each city-wide member and 1 for each borough member are interpreted as simply defining the coalitions of members which enable the Board to act.

Next, every coalition which allows the Board to act is defined and for each such coalition the population-weighted city-wide and borough votes are summed to find total weighted votes. These total weighted votes are then compared with the corresponding total weighted votes which would result for the same coalition on the ideal Board, and percent differences computed.

As presently constituted, the full Board can act by (at least) votes of the following members:

SIMPLE MAJORITY (6 VOTES)

Case I: 2 city-wide + 2 boroughs
Case II: 1 city-wide + 4 boroughs
Case III: 3-city-wide + no boroughs

TWO-THIRDS MAJORITY (8 VOTES)

Case IV: 2-city-wide + 4 boroughs
Case V: 3 city-wide + 2 boroughs

THREE-FOURTHS MAJORITY (9 VOTES)

Case VI: 2 city-wide + 5 boroughs
Case VII: 3 city-wide + 3 boroughs

UNANIMOUS (11 VOTES)

Case VIII: 3 city-wide + 5 boroughs

On budget override matters, the vote of the Mayor is not counted. Either a simple majority or a two-thirds majority may be required. These majorities can be achieved by (at least) votes of the following members:

SIMPLE MAJORITY (5 VOTES)

Case IX: 2 city-wide + 1 borough
Case X: 1 city-wide + 3 boroughs
Case XI: no city-wide + 5 boroughs

TWO-THIRDS MAJORITY (6 VOTES)

Case XII: 2 city-wide + 2 boroughs
Case XIII: 1 city-wide + 4 boroughs

Exhibits V through VII show every combination of votes (cases) of the full Board for simple majority, two-thirds



majority, and three-fourths majority respectively. Also shown at the foot of each exhibit are averages of the percent differences for all cases, for all cases in which the associated majority is achieved, and for all threshold cases, i.e., cases in which the associated majority is just achieved. Exhibits VIII and IX show respectively corresponding information for votes of the mayorless Board for simple majority and two-thirds majority votes. Tables IV, V, VI, VII, and VIII present a summary of threshold cases from Exhibits V through IX. As can be readily seen, the percent differences from norm (a positive value indicates overrepresentation) vary significantly depending on the makeup of each combination, as should be expected. Obviously, percent differences for unanimous votes are zero. Absent any knowledge to the contrary, it is reasonable and fair to treat all combinations as equally likely and examine average percent differences as measures of vote apportionment. Table IX summarizes both average differences and maximum percent differences. Maximum percent differences for combinations which do not permit the Board to act are inconsequential and need not be considered.

It is apparent that when the actual representation of each city-wide and borough member is accounted for under the Board's voting structure, average and even maximum percent differences are not excessive. Furthermore, the very existence of two-thirds, three-fourths, and unanimous vote requirements ensures that Board actions are controlled by representatives of a majority of the city population.

*Affidavit of Frank V. Ponterio in Support of Motion*

## TABLE IV

SIMPLE MAJORITY—FULL BOARD

| Case | Boroughs Voting Yes | Weighted Borough Votes | Weighted Total Votes | % Difference From Norm |
|---|---|---|---|---|
| | Bn+Q | 4122261 | 18264321 | — 7.62 |
| | Bn+M | 3658469 | 17800529 | — 4.89 |
| | Bn+Bx | 3400051 | 17542111 | — 3.37 |
| | Bn+S | 2583057 | 16725117 | + 1.45 |
| I | Q+M | 3318858 | 17460918 | — 2.89 |
| | Q+Bx | 3060440 | 17202500 | — 1.37 |
| | Q+S | 2243446 | 16385506 | + 3.45 |
| | M+Bx | 2596648 | 16738708 | + 1.37 |
| | M+S | 1779654 | 15921714 | + 6.18 |
| | Bx+S | 1521236 | 15663296 | + 7.70 |
| | Bn+Q+M+Bx | 6718909 | 13789939 | — 8.34 |
| | Bn+Q+M+S | 5901915 | 12972945 | — 1.93 |
| II | Bn+Q+Bx+S | 5643497 | 12714527 | + 0.10 |
| | Bn+M+Bx+S | 5179705 | 12250735 | + 3.75 |
| | Q+M+Bx+S | 4840094 | 11911124 | + 6.42 |
| III | None | 0000000 | 21213090 | 0.00 |

Bn–Brooklyn; Q–Queens; M–Manhattan; Bx–Bronx; S–Staten Island

Norm weighted total votes: Case I, 16970472
Case II, 12727854
Case III, 21213090



*Affidavit of Frank V. Ponterio in Support of Motion*

## TABLE V

TWO-THIRDS MAJORITY—FULL BOARD

| Case | Boroughs Voting Yes | Weighted Borough Votes | Weighted Total Votes | % Difference From Norm |
|---|---|---|---|---|
| | Bn+Q+M+Bx | 6718909 | 20860969 | — 5.36 |
| | Bn+Q+M+S | 5901915 | 20043975 | — 1.24 |
| IV | Bn+Q+Bx+S | 5643497 | 19785557 | + 0.07 |
| | Bn+M+Bx+S | 5179705 | 19321765 | + 2.41 |
| | Q+M+Bx+S | 4840094 | 18982154 | + 4.13 |
| | Bn+Q | 4122261 | 25335351 | — 5.38 |
| | Bn+M | 3658469 | 24871559 | — 3.45 |
| | Bn+Bx | 3400051 | 24613141 | — 2.38 |
| | Bn+S | 2583057 | 23796147 | + 1.02 |
| V | Q+M | 3318858 | 24531948 | — 2.04 |
| | Q+Bx | 3060440 | 24273530 | — 0.97 |
| | Q+S | 2243446 | 23456536 | + 2.43 |
| | M+Bx | 2596648 | 23809738 | + 0.96 |
| | M+S | 1779654 | 22992744 | + 4.36 |
| | Bx+S | 1521236 | 22734326 | + 5.44 |

Bn–Brooklyn; Q–Queens; M–Manhattan; Bx–Bronx; S–Staten Island

Norm total weighted votes: Case IV, 19798884
Case V, 24041502

*Affidavit of Frank V. Ponterio in Support of Motion*

## TABLE VI

THREE-FOURTHS MAJORITY—FULL BOARD

| Case | Boroughs Voting Yes | Weighted Borough Votes | Weighted Total Votes | % Difference From Norm |
|---|---|---|---|---|
| VI | Bn+Q+M+Bx +S | 7071030 | 21213090 | 0.00 |
| | Bn+Q+M | 5549794 | 26762884 | — 5.14 |
| | Bn+Q+Bx | 5291376 | 26504466 | — 4.12 |
| | Bn+Q+S | 4474382 | 25687472 | — 0.91 |
| | Bn+M+Bx | 4827584 | 26040674 | — 2.30 |
| VII | Bn+M+Bx | 4010590 | 25223680 | + 0.91 |
| | Bn+Bx+S | 3752172 | 24965262 | + 1.93 |
| | Q+M+Bx | 4487973 | 25701063 | — 0.96 |
| | Q+M+S | 3670979 | 24884069 | + 2.25 |
| | Q+Bx+S | 3412561 | 24625651 | + 3.26 |
| | M+Bx+S | 2948769 | 24161859 | + 5.08 |

Bn–Brooklyn; Q–Queens; M–Manhattan; Bx–Bronx; S–Staten Island

Norm weighted total votes: Case VI, 21213090
Case VII, 25455708



*Affidavit of Frank V. Ponterio in Support of Motion*

## TABLE VII

SIMPLE MAJORITY— MAYORLESS BOARD

| Case | Boroughs Voting Yes | Weighted Borough Votes | Weighted Total Votes | % Difference From Norm |
|---|---|---|---|---|
| | Bn | 2230936 | 16372996 | — 5.25 |
| | Q | 1891325 | 16033385 | — 3.07 |
| IX | M | 1427533 | 15569593 | — 0.09 |
| | Bx | 1169115 | 15311175 | + 1.58 |
| | S | 352121 | 14494181 | + 6.83 |
| | Bn+Q+M | 5549794 | 12620824 | — 11.55 |
| | Bn+Q+Bx | 5291376 | 12362406 | — 9.27 |
| | Bn+Q+S | 4474382 | 11545412 | — 2.05 |
| | Bn+M+Bx | 4827584 | 11898614 | — 5.17 |
| X | Bn+M+S | 4010590 | 11081620 | + 2.05 |
| | Bn+Bx+S | 3752172 | 10823202 | + 4.33 |
| | Q+M+Bx | 4487973 | 11559003 | — 2.17 |
| | Q+M+S | 3670979 | 10742009 | + 5.05 |
| | Q+Bx+S | 3412561 | 10483591 | + 7.34 |
| | M+Bx+S | 2948769 | 10019799 | + 11.44 |
| XI | Bn+Q+M+Bx +S | 7071030 | 7071030 | 0.00 |

Bn–Brooklyn; Q–Queens; M–Manhattan; Bx–Bronx; S–Staten Island

Norm weighted total votes: Case IX, 15556266
Case X, 11313648
Case XI, 7071030

TABLE VIII

TWO-THIRDS MAJORITY—MAYORLESS BOARD

| Case | Boroughs Voting Yes | Weighted Borough Votes | Weighted Total Votes | % Difference From Norm |
|---|---|---|---|---|
| | Bn+Q | 4122261 | 18264321 | — 7.62 |
| | Bn+M | 3658469 | 17800520 | — 4.89 |
| | Bn+Bx | 3400051 | 17542111 | — 3.37 |
| | Bn+S | 2583057 | 16725117 | + 1.45 |
| XII | Q+M | 3318858 | 17460918 | — 2.89 |
| | Q+Bx | 3060440 | 17202500 | — 1.37 |
| | Q+S | 2243446 | 16385506 | + 3.45 |
| | M+Bx | 2596648 | 16738708 | + 1.37 |
| | M+S | 1779654 | 15921714 | + 6.18 |
| | Bx+S | 1521236 | 15663296 | + 7.70 |
| | Bn+Q+M+Bx | 6718909 | 13780030 | — 8.34 |
| | Bn+Q+M+S | 5901915 | 12972945 | — 1.93 |
| XIII | Bn+Q+Bx+S | 5643497 | 12714527 | + 0.10 |
| | Bn+M+Bx+S | 5179705 | 12250735 | + 3.75 |
| | Q+M+Bx+S | 4840094 | 11911124 | + 6.42 |

Bn–Brooklyn; Q–Queens; M–Manhattan; Bx–Bronx; S–Staten Island

Norm weighted total votes: Case XII, 16970472
Case XIII, 12727854



TABLE IX

| | Average % Differences | | | | Maximum % Differences (All Achieved Cases) | |
|---|---|---|---|---|---|---|
| | Majority Required | Threshold Cases | All Achieved Cases | All Cases | Cases Represented | Under Represented |
| Full | 1/2 | 3.97 | 3.20 | 6.15 | + 7.70 | — 8.34 |
| Board | 2/3 | 2.72 | 2.38 | 6.15 | + 5.44 | — 5.36 |
| | 3/4 | 2.07 | 1.93 | 6.15 | + 5.14 | — 5.08 |
| Mayorless | 1/2 | 5.29 | 4.21 | 4.32 | +11.44 | —11.55 |
| Board | 2/3 | 4.07 | 3.47 | 4.31 | 6.42 | — 8.34 |

12. A plan with a deviation greater than that characteristic of the current Board has already been declared to be not facially unconstitutional. In *Baker* v. *Regional High School District No. 5,* 476 F. Supp. 319 (1979), Judge Newman of the U.S. Court of Appeals for the Second Circuit, sitting by designation, upheld a plan for three Connecticut towns which purposefully diluted the voting power of the largest town. The Regional District was composed of the towns of Orange, Woodbridge, and Bethany with the following populations and votes:

| Town | Population | Votes | Population per Vote |
|---|---|---|---|
| Orange | 13,524 | 7 (6) | 1932 (2254) |
| Woodbridge | 7,673 | 4 | 1918 |
| Bethany | 3,857 | 2 | 1929 |
| | 25,054 | 13 | |

Norm = 25,054 ÷ 13 = 1927

Specifically to avoid domination of the District by the town of Orange which, with a number of votes linearly proportional to its population, had itself a majority of

total votes, a rule was adopted that required votes of representatives from more than one town to form a majority authorizing the District to act. Simply stated, this rule effectively limits the total vote of Orange to 6 instead of 7 votes. This essentially results in a diminution of Orange's representation by $\frac{7-6}{7}$ or 14.3%. An *Abate* analysis would show a percent deviation for Orange of $\frac{1927-2254}{1927}$ $\times$ 100 or 17%. In its own way, the current composition and voting rules of the Board attempt to achieve the same result as that in *Baker,* i.e., to balance literal one person, one vote constraints and the practical necessity to avoid domination by a single member (Brooklyn) of a body. Moreover it does so with a worst-case departure from such literal constraints smaller than that approved in Baker.

13. In its opinion on appeal, the Second Circuit advised that the opportunity of individual voters to elect the city-wide members of the Board should be considered. The following statistics indicate that Staten Island's opportunity to determine the outcome of city-wide elections is non-existent. Tables X through XV show the vote by county for mayor for all election years from 1961 through 1981 (source: Official Directory, the City of New York). In none of those years did the Staten Island vote affect the election outcome. The mayor's race was extraordinarily close in 1965 but even in that year, and even if the entire vote of Staten Island were marshalled for the runner-up, Beame, the outcome would not have been different. If the 37,148 votes for Lindsay and the 20,251 votes for Buckley were given to Beame, the new totals would be: Lindsay—



1,111,958; Beame—1,104,298; Buckley—320,775, with Lindsay still the winner. By contrast, every other borough could affect the outcomes of mayoral elections. In every election, except the landslide years of 1973 and 1981 when no one borough's votes could be decisive, even the second smallest borough, the Bronx, could have changed the outcome, at least to the extent of electing the runner-up.

The same conclusions apply also for election of the other two city-wide members. Tables XVI and XVII show respectively the closest elections since 1961 for Comptroller and President of the Council. Again, Staten Island's total vote could not alter the outcomes, but the vote of any borough could.

TABLE X

General Election Held Nov. 3, 1981

| *County* | *Edward I. Koch (Dem.)* | *(Rep.)* | *Frank J. Barbaro (U.)* | *John A. Esposito (Cons.)* |
|---|---|---|---|---|
| New York | 155,530 | 34,101 | 56,702 | 6,682 |
| Bronx | 110,470 | 21,951 | 22,074 | 7,634 |
| Kings | 218,334 | 42,958 | 48,812 | 15,388 |
| Queens | 217,045 | 58,767 | 31,225 | 26,515 |
| Richmond | 36,909 | 16,557 | 3,906 | 3,881 |
| Totals | 738,288 | 174,334 | 162,719 | 60,100 |

TABLE XI

General Election Held Nov. 8, 1977

| *County* | *Edward I. Koch (Dem.)* | *Mario Cuomo (Dem.-Lib.)* | *Roy Goodman (Rep.)* | *Barry Farber (Cons.)* |
|---|---|---|---|---|
| New York | 184,842 | 70,717 | 19,324 | 9,070 |
| Bronx | 116,436 | 75,754 | 6,102 | 7,624 |
| Kings | 204,934 | 153,134 | 11,491 | 16,576 |
| Queens | 191,894 | 186,590 | 18,460 | 20,453 |
| Richmond | 19,270 | 36,747 | 3,229 | 3,714 |
| Totals | 717,376 | 522,942 | 58,606 | 57,437 |

## TABLE XII

General Election Held Nov. 6, 1973

| *County* | *Abraham D. Beame (Dem.)* | *Alfred Blumenthal (Lib.)* | *John J. Marchi (Rep.-Cons.)* | *Mario Biaggi (Dem.-Cons.)* |
|---|---|---|---|---|
| New York | 158,050 | 101,117 | 45,803 | 17,882 |
| Bronx | 160,774 | 32,661 | 37,609 | 50,805 |
| Kings | 321,477 | 60,340 | 73,776 | 51,713 |
| Queens | 283,474 | 66,059 | 90,942 | 60,490 |
| Richmond | 37,355 | 5,120 | 28,445 | 9,096 |
| Totals | 961,130 | 265,297 | 276,575 | 189,986 |

## TABLE XIII

General Election Held Nov. 4, 1969

| *County* | *John V. Lindsay (L.-I.)* | *Mario A. Procaccino (D.-NP.-CSI.)* | *John J. Marchi (R.-C.)* |
|---|---|---|---|
| New York | 328,564 | 99,460 | 61,539 |
| Bronx | 161,953 | 165,647 | 76,711 |
| Kings | 256,046 | 301,324 | 152,933 |
| Queens | 249,330 | 245,783 | 192,008 |
| Richmond | 16,740 | 19,558 | 59,220 |
| Totals | 1,012,633 | 831,772 | 542,411 |

## TABLE XIV

General Election Held Nov. 2, 1965

| *County* | *John V. Lindsay (R.-L.-IC.)* | *Abraham D. Beame (D.-CSFP.)* | *William F. Buckley (C.)* |
|---|---|---|---|
| New York | 291,396 | 193,230 | 37,694 |
| Bronx | 181,072 | 213,980 | 63,858 |
| Kings | 308,398 | 365,360 | 97,679 |
| Queens | 331,162 | 250,662 | 121,544 |
| Richmond | 37,148 | 23,467 | 20,451 |
| Totals | 1,149,106 | 1,046,699 | 341,226 |



## TABLE XV

General Election Held Nov. 7, 1961

| *County* | *Robert F. Wagner (D.-Lib.-Bro.)* | *Louis J. Lefkowitz (R.-CA.-NP.)* | *Lawrence E. Gerosa (CP.)* |
|---|---|---|---|
| New York | 265,015 | 174,471 | 36,893 |
| Bronx | 255,528 | 134,964 | 67,213 |
| Kings | 396,539 | 251,258 | 105,232 |
| Queens | 190,194 | 243,836 | 99,987 |
| Richmond | 30,145 | 31,162 | 12,279 |
| Totals | 1,237,421 | 835,691 | 321,604 |

## TABLE XVI

Vote for Comptroller

General Election Held Nov. 4, 1969

| *County* | *Abraham D. Beame (D.-NP.-CSI.)* | *Fioravante G. Perrotta (R.-L.-I.)* | *Vito P. Battista (C.)* |
|---|---|---|---|
| New York | 153,818 | 281,591 | 19,055 |
| Bronx | 207,096 | 147,748 | 26,063 |
| Kings | 378,379 | 230,996 | 63,179 |
| Queens | 344,189 | 243,540 | 72,544 |
| Richmond | 36,055 | 34,561 | 18,686 |
| Totals | 1,119,537 | 938,436 | 199,527 |

## TABLE XVII

Vote for President of the Council

General Election Held Nov. 4, 1969

| *County* | *Sanford D. Garelik (R.-L.-I.)* | *Francis X. Smith (D.-NP.-CSI.)* | *Robert F. Kelly (C.)* |
|---|---|---|---|
| New York | 310,801 | 124,208 | 18,693 |
| Bronx | 169,500 | 180,808 | 23,786 |
| Kings | 278,862 | 324,489 | 52,659 |
| Queens | 280,003 | 317,374 | 59,329 |
| Richmond | 35,270 | 34,939 | 17,563 |
| Totals | 1,074,436 | 981,818 | 172,030 |

*Affidavit of Frank V. Ponterio in Support of Motion*

14. As shown by the following census figures, Staten Island alone among the boroughs is experiencing a population growth.

TABLE XVIII

| *Borough* | *1970 Census* | *1980 Census* | *% Change* |
|---|---|---|---|
| Bronx | 1,471,701 | 1,169,115 | — 20.6 |
| Brooklyn | 2,602,012 | 2,230,936 | — 14.3 |
| Manhattan | 1,539,233 | 1,427,533 | — 7.3 |
| Queens | 1,986,473 | 1,891,325 | — 4.8 |
| Staten Island | 295,443 | 352,121 | + 19.2 |
| New York City | 7,894,862 | 7,071,030 | — 10.4 |

Still considerably under-developed and virtually without public mass transit, Staten Island desperately needs significant capital improvement. Exhibit *X*, excerpts from "Community District Register for the Preliminary Budget", Fiscal Year 1984, illustrates the need for roads, sewers, schools, and other capital facilities to meet essential needs.

15. Examination of Exhibits V through IX shows that whether a borough is under-or over-represented compared with the ideal Board depends on the make-up of each particular coalition of members. In effect, Brooklyn sometimes benefits from the *per capita* over-representation of Staten Island, the Bronx, and Manhattan. Table XIX gives a summary of the number of cases in which Brooklyn is part of a coalition which enables the Board to act and which overall is under-represented, over-represented, or ideally represented (i.e., % difference = 0.00). As shown by the last row of the table, even the borough with the smallest *per capita* representation is under-represented in



*Affidavit of Frank V. Ponterio in Support of Motion*

fact in only about one-half of the cases requiring less than a unanimous vote. For unanimous votes, all boroughs are ideally represented.

TABLE XIX

| | Full Board | | | Mayorless Board | |
|---|---|---|---|---|---|
| Representation of Brooklyn | 1/2 Majority | 2/3 Majority | 3/4 Majority | 1/2 Majority | 2/3 Majority |
| Under-represented | 43 | 15 | 6 | 22 | 13 |
| Over-represented | 26 | 11 | 4 | 13 | 9 |
| Ideally represented | 7 | 4 | 4 | 4 | 3 |
| Totals | 76 | 30 | 14 | 39 | 25 |
| % Under-represented | 56.6 | 50.0 | 42.9 | 56.4 | 52.0 |

/s/ Frank V. Ponterio
Frank V. Ponterio
766 Pelton Avenue
Staten Island, New York 10310
(212) 981-7953

Dated: September 30, 1983
Staten Island, N.Y.

Sworn to before me this
30th day of September, 1983
/s/ David W. Lehr

**Plaintiffs' Notice of Motion for Summary Judgment, dated December 6, 1983**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
81-CV-3920 (E.R.N.)

---

MORRIS, et al.,

*Plaintiffs,*

—against—

BOARD OF ESTIMATE, et al.,

*Defendants,*

—and—

PONTERIO, et al.,

*Intervenors.*

---

Based upon the affidavits, exhibits, memorandum, local rule 3(g) statement submitted herewith, as well as the entire record herein, the plaintiffs will move for summary judgment declaring the present structure of the Board of Estimate violative of equal protection, in the courtroom of the Honorable Edward R. Neaher at the Federal Courthouse at 225 Cadman Plaza, Brooklyn, New York, United States District Judge, on January 20, 1984 at 10:00 A.M. or as soon thereafter as this motion may be heard.

Dated: December 16, 1983

/s/ RICHARD EMERY
Richard Emery
Arthur Eisenberg
*Attorneys for Plaintiffs*
New York Civil Liberties Union
84 Fifth Avenue
New York, NY 10011
(212) 924-7800



**Appendix to Plaintiffs' Memorandum of Law Submitted to the United States District Court Eastern District of New York in Support of Their Motion for Summary Judgment on Remand from the Second Circuit, filed December 20, 1983**

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1. Affidavit of Herman Badillo
2. Affidavit of Wendell Foster
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4. Affidavit of Steven J. Brams
5. Affidavit of Emanuel Tobier
6. W. Sayre and H. Kauffman, *Governing New York City* (1960), pp. 626-652
7. New York State Charter Revision Commission for New York City, *Borough Government Report* (1973), pp. i-55
8. J. Still, *Political Equality and Election Systems*, 91 Ethics 375-394 (April 1981)
9. F. Grad and A. Charlo, *Floaterial Districts*, Report to New York City Charter Revision Commission (1982)

**Exhibit (1): Annexed to the Appendix to Plaintiffs' Memorandum of Law**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

83-CV-3920 (ERN)

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BEVERLY MORRIS, et al.,

*Plaintiffs,*

—v—

THE BOARD OF ESTIMATE, et al.,

*Defendants.*

and

FRANK V. PONTERIO and ROBERT A. STRANIERE,

*Intervenor-Defendants.*

---

AFFIDAVIT OF HERMAN BADILLO

I, Herman Badillo, being duly sworn upon oath, depose and say, as follows:

1. I am a former member of the Board of Estimate, having served as Bronx Borough President from January 1, 1966, until December 31, 1969. Prior to my service on the Board of Estimate, I worked closely with that body as City Deputy Commissioner of Real Estate from January 1962 until November 1962, and then as City Commissioner of Housing Relocation, from November, 1962 until August, 1965. In 1970 I was elected to Congress where I served three and a half terms representing the 21st District in the Bronx. On November 30, 1977, I resigned my Congres-



*Exhibit 1 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

sional office to become Deputy Mayor to Mayor Koch with special responsibilities for developing the renewal and revitalization of the South Bronx pursuant to the federal commitment made by President Carter after his visit to the South Bronx in 1977. In that capacity, I once again worked closely with the Board of Estimate. Therefore, I am intimately familiar with the operations and practices of the Board of Estimate and my statements to this Court are based upon my first-hand knowledge.

2. The present structure of the Board of Estimate precludes it from fulfilling its historic function of coalescing the citywide and local interests that coexist within the borders of the City of New York. Historically, when the boroughs of New York were separate governmental entities with significant administrative and executive powers, the Board of Estimate served the purpose of gathering in one body the City's most powerful elected officials, each of whom administered major governmental entities with either citywide or boroughwide jurisdiction. During this period of New York's history, the structure of the Board of Estimate required the leaders of strong borough governments to compromise and agree with one another, as well as with the citywide officials, in order to formulate City policy.

3. Since the 1963 Charter Revision, when the last vestiges of significant borough government functions were eliminated, the Board of Estimate has taken on a very different role. It no longer serves its original function by bringing together local and citywide executives, but rather it now exists as a body of three citywide executives

and the borough presidents who, under the present circumstances, have no significant function other than representation of their respective boroughs on the Board. However, none of the four large boroughs of New York City (all but Richmond) can be adequately represented by its borough president. Each borough is so heterogeneous with respect to economic, religious, racial, and ethnic disparities that neighborhoods which lie within each borough have diametrically opposed interests. Under the present scheme local interests are no longer effectively represented. Thus, in the Bronx, for example, Riverdale and the North Bronx have little or nothing in common with the South Bronx. In Brooklyn, Bedford-Stuyvesant, Bushwick and Brownsville have no common local interests with Brooklyn Heights and Park Slope. In Manhattan, it is impossible to represent effectively Harlem and the Upper East Side though they are contiguous. The sad result is that representation by the borough presidents is narrowly limited to the particular consistency by which each borough president is elected. Since all but five of the borough presidents elected during the 82-year existence of the Board of Estimate have been white and middle-class, minorities and their neighborhoods have been unfairly represented on the Board of Estimate during most of its history.

4. It was in large part for this reason that David Dinkins ran for the borough presidency of Manhattan in 1979. He stated that the minority community and neighborhoods of the City as a whole, deserved some representation on the Board of Estimate. Of course, Mr. Dinkins did not win a seat on the Board and minorities remain entirely unrepresented on the Board at the present time.



5. It is the present structure of the Board of Estimate which precludes effective neighborhood representation, especially of minority groups. Because of the size of the boroughs and because of their heterogeneity, minority interests even in contiguous neighborhoods are not provided any effective representation on the Board of Estimate under its present structure. Given the separate representation provided for the 350,000 people of Staten Island under the present Board structure, it seems genuinely unfair to deny equal representation to other larger contiguous population groups which have united interests based upon well-defined neighborhood identification.

5. The tragedy and inequity of the absence of fair representation on the Board of Estimate was perhaps never better illustrated than in the case of the Charlotte Street renewal project for the South Bronx. In 1977, President Carter visited the South Bronx and promised renewal of the area as the first step of a federal program to restore housing in America's decaying inner cities. On November 16, 1978, the Board of Estimate overwhelmingly approved the project based upon President Carter's assurances that federal aid would finance renewal. With great hope and optimism the planning for a major urban renewal project began, with national and international fanfare. On February 8, 1979, however, only two and a half months later, the issue again came before the Board on the issue of how the renewal area should be remapped. Two borough presidents—Queens and Brooklyn—as well as the City Council President reversed their earlier positions on the issue, dooming the entire project by a 7 to 4 vote. The favorable votes came only from the Mayor, Staten Island and the

Bronx itself. This turnaround occurred despite the official support of the President of the United States, Governor, and Mayor. Instead of building new housing, the City is now filling the gaping holes in abandoned housing with decals.

6. Were the Board of Estimate truly representative of groupings of common interests within the City, as it is in the case of Staten Island, the result of the Charlotte Street project might well have been different. Were the Brooklyn's and Queens' representatives to this body not primarily concerned with the middle-class interests of the constituents who elected them, these borough presidents might have voted otherwise. Were the Board comprised of representatives from neighborhood areas *within* each of the boroughs instead of boroughwide representatives, the voice of minority interests might have emerged from a city-wide coalition of minority neighborhoods. Were interest groups even of the size of Staten Island—350,000—represented on the Board, the voice of fair representation for minorities may have been heard through the legislative process of vote trading which may well have resulted in respect for the dire need of minorities in the South Bronx.

7. The Charlotte Street project is merely one notable example of the failure of the Board of Estimate to represent local, neighborhood interests through its present structure. Though the Bronx Borough President supported the project, and, therefore, it can be argued that local interests were represented, the more accurate characterization of this international disgrace for United States urban policy must focus on the suppression of potential support for the



project from vocal and active minority interests in Brooklyn and Queens. These interest would have favored the project if the structure of the Board of Estimate had permitted representation of homogeneous groups other than Staten Island. The local interests in Queens and Brooklyn in the Charlotte Street case, and many other such neighborhood interests in other cases, are suppressed by the present borough-based scheme of representation on the Board of Estimate.

8. As explained above, this sort of subjugation of important local interests occurs as a result of representation of an entire borough by one official who is elected, in almost every instance, by a white middle-class constituency and, who, therefore, usually fails to represent many of the neighborhoods within his "district." Notwithstanding the narrowness of the borough president's usual constituency, the borough presidents are important and influential insofar as they are members of the Board of Estimate. Their influence and strength derives as much from their lobbying and debate functions on the Board as from the exercise of the one vote that each is granted. Because the borough presidents have access to the three most powerful city officials as well as to each other, and because they participate in every aspect of exercising the Board's extensive powers, the borough presidents play a major role in governing the City.

9. The large number of unanimous votes on the Board is by no means reflective of the divisions on the Board. Unanimous votes are often the result of trading support, lobbying, debate and deference to the particular expertise

of one or more Board members. Very often the lack of dissent or vote division is no indication of the stormy process which lies behind unanimous decisions. Moreover, many of the most significant issues resolved by the Board are settled by divided votes. A good example was the Charlotte Street project I have described above. Thus, though it may not be clear from the predominant pattern of unanimous voting by Board members, the actual day-to-day process of resolving issues on the Board involves a substantial, important, and often crucial role for the borough presidents.

10. It is especially the case that the borough presidents hold the key to the Board's decisions when issues before the Board involve major questions relating to the future of the City. Such issues very often divide the citywide members of the Board. In fact, this division of the citywide Board members occurs frequently as a result of the political reality that the Comptroller and City Council President are often engaged in an ongoing campaign for the Mayor's office, and the Mayor is often running for re-election in competition with these officials. Much of the effort of the citywide officials is, thus, spent on distinguishing themselves from one another in their incessant quest for the mayoralty. The result of this on-going campaign is frequent divisions between the citywide officials on controversial city issues. Even when no incipient political campaign exists to divide the citywide members, the citywide officials, as a result of their different positions and responsibilities, often have conflicting views of citywide interests. Any such divisions among the citywide officials on the Board vests enormous power in the borough presi-



dents whose votes in these circumstances determine the outcome of many of the most significant city controversies.

11. Since the borough scheme of representation after the evisceration of the powers of borough government in 1963 does not constitute a fair and meaningful basis for representation of the people of the City of New York, and since borough "districts" for the Board of Estimate result in subjugation of significant homogeneous neighborhood groups, I can see no convincing reason to maintain the Board's present borough structure. Moreover, as I have described above, the inequity of permitting only one borough—Staten Island—to have a truly representative member of the Board, argues forcefully for abolition of the borough scheme of representation on the Board. In light of the disparities in voting power between the citizens of the different boroughs, it seems to me unsupportable to maintain this scheme of Board of Estimate representation.

/s/ Herman Badillo
Herman Badillo

Sworn to before me this
1st day of December, 1983.

/s/ Edmee Quinones
Notary Public

**Exhibit (2): Annexed to the Appendix to Plaintiffs' Memorandum of Law**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

81-CV-3920 (ERN)

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BEVERLY MORRIS, et al.,

*Plaintiffs,*

—v—

THE BOARD OF ESTIMATE, et al.,

*Defendants,*

and

THE BOARD OF ESTIMATE, et al.,
FRANK V. PONTERIO and ROBERT A. STRANIERE,

*Intervenor-Defendants.*

---

AFFIDAVIT OF WENDELL FOSTER

I, Wendell Foster, being duly sworn upon oath depose and say as follows:

1. I am the City Councilman for the Ninth District in the Bronx. I have served in that capacity for five years. I am and have been the pastor at the Christ Church on Forest Avenue and 161st Street in the Bronx for the past 18 years.

2. I represent a district which is predominantly black and poor. The Morrisania and Highbridge neighborhoods



*Exhibit 2 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

make-up most of the population in my district. The greatest need of my constituents is housing and jobs.

3. Under the present structure of the Board of Estimate the Bronx Borough President has the responsibility of representing the people of my community on that body. This simply has not occurred. The Bronx Borough President has traditionally been answerable only to the more powerful white middle-class constituency. Thus, in my experience the Bronx Borough Presidents have done little or nothing to serve the communities I represent.

4. Importantly, the most compelling needs of my district cannot be served by the City Council. The Board of Estimate's functions and powers over economic distribution are the key to addressing the difficulties of revitalizing communities such as mine. It is, therefore, often frustrating to serve on a body that has little or no effective power to help my constituents. It is even more frustrating to observe constantly the opportunities to help my community being passed-over because the Bronx Borough President is unresponsive to my community's needs.

5. Were communities such as mine to have representation on the Board commensurate with our population, the minority interests in the City could join together to see that the Board exercised its powers in a manner which is responsive to our needs. Under the present structure such an alliance is precluded by the borough president system of representation on the Board and, as a result, my constituents are effectively disenfranchised. The result is that the Board serves primarily the interests of the rich and middle class.

*Exhibit 2 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

6. In my view this situation is unsupportable and destructive. Since this *de facto* disenfranchisement flows in large part from the one person, one vote disparities of the Board of Estimate's structure, which is based on borough "districts," the restructuring of this body is in the interests of the City as a whole. If the Board of Estimate were to be restructured into districts which allow for fair representation of the poorer, presently underrepresented neighborhoods, both the voting disparities and the disenfranchisement of minority neighborhoods would be alleviated.

/s/ Wendell Foster
Wendell Foster

Dated: December 12, 1983
New York, New York

Sworn to before me this 12th day of December, 1983.

/s/ Richard Emery
Notary Public



**Exhibit (3): Annexed to the Appendix to Plaintiffs' Memorandum of Law**

UNITED STATES DISTRICT COURT

Eastern District of New York

82-CV-3920 (ERN)

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Beverly Morris et al.,

*Plaintiffs,*

—against—

Board of Estimate et al.,

*Defendants.*

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Affidavit of Edward L. Sadowsky

Edward L. Sadowsky, being duly sworn deposes and says:

1. I am a member of the city council of the City of New York and have served in that body since January 1, 1962. I am presently chairman of the finance committee.

2. I make this affidavit to express my views on several anomalies in the governance of New York City which bear on the issue before the court.

3. I believe that the most important legislative function in the city is the adoption of the budget. Unlike the federal and state governments, the city is not vested with broad policy-making powers. Its principal role is the delivery of municipal services. As a consequence, most major policy decisions—whether it is the proper number of police officers or whether the city should provide an all-day kin-

dergarten for all eligible children—are articulated in the city's expense budget. Other policy decisions relating to the nature and condition of the city's infrastructure—its roads, highways, sewers and water supply—likewise are determined by means of the city's capital budget.

4. Under current law, the City Council and board of estimate must act concurrently on the budget, and if they do not concur, they must attempt to reconcile their differences in a conference.

5. Whatever may be the virtues of bicameral legislatures at the federal or state level, it seems to me that bicameralism plays no useful purpose in New York city and effectively impedes the exercise of legislative power.

6. While the mayor votes on the board of estimate in the exercise of its land use, contracting and franchise powers, he has no vote on the adoption of the budget. The board, for that purpose, consists of the comptroller, the president of the council and the five borough presidents. The comptroller is, of course, the city's chief fiscal officer with a broad range of executive functions including the audit of city expenditures. There appears to be no sound reason why the comptroller should also be vested with a legislative role in budget adoption. Indeed, it could be argued that it is a conflict for the officer charged with the duty of auditing expenditures to participate in deciding how city funds should be spent.

7. The office of president of the council is devoid of virtually all power except for the vote on the board of estimate. While it may seem that the president is an emis-



sary from the council to the board, as an actual matter, that is not the case. The role of the president of the city council is very similar to that of the vice president of the United States in the senate. The president of the council presides at council meetings but has no vote, except in the case of a tie. The president, neither historically nor by charter definition, is a leader of the council. That role is performed by the majority leader of the council and the committee chairs, as is the case in the United States senate. There is, therefore, no rationale for the president of the council voting on the adoption of the budget based upon the role played by the president of the council.

8. The five borough presidents would appear to represent regional interests, much like the United States senators, as contrasted with the one person, one vote principle which governs the election of council members. However, whatever value the analogy might have had at the outset of the century, today, the comparison has no value whatsoever because of both the changing powers of the borough presidents and the changing character of the boroughs they represent.

9. At the outset of the century, the borough presidents had considerable powers, particularly with respect to street, sewers and public works, and it was logical, because of these powers, that they should play important roles in central city government.

10. Beginning with the charter revision of 1963, the power of the borough presidents in their boroughs has been almost completely eliminated. The functions formerly performed by them have been transferred to the central city

government. Therefore, borough presidents no longer represent a regional government with considerable independence and power.

11. As a consequence, in recent years borough presidents have principally taken on the role as advocates of borough needs as they perceive them and as mediators between the people in their boroughs and city hall.

12. But even here, circumstances have changed so remarkably that it is questionable whether there is any such role to be played.

13. In recent years, there has been a considerable erosion in the identity which citizens make with the boroughs in which they live with a particular borough. In the borough of Queens, it is questionable whether that identification was strong at any time. People in Queens always considered that they lived in Forest Hills or Corona or Long Island City or Astoria, rather than in Queens. But even the citizens of the Bronx and Brooklyn who years and years past has a much stronger sense of borough identity, now are likely refer to themselves as coming from communities within a borough rather than the borough itself. For instance, people in the Bronx are likely to refer to communities such as the south Bronx or Riverdale; the people in Brooklyn are likely to live in Bedford Stuyvesant, Brooklyn Heights or Canarsie.

14. At the same time, and perhaps as the cause for community, rather than borough identification, the boroughs have become extremely heterogeneous. Each of them, with the possible exception of Staten Island, has developed



within their boundaries extraordinarily diverse economic and ethnic and religious patterns.

15. As a consequence, people living in Brownsville in Brooklyn are more likely to find a greater community of interest with people in the South Bronx than with the residents of Brooklyn Heights, for instance. Under these circumstances, it is virtually impossible for borough presidents to advocate successfully borough needs or to mediate on behalf of their citizens when in fact, those needs are so disparate and, indeed, in some respects inconsistent.

16. It may be argued, therefore, that the boroughs are no longer meaningful political subdivisions for the purposes of city government. Rather, more meaningful political subdivisions are the various communities within the borough, and a better solution for legislative power in the city of New York is to distribute to those communities the right to elect their legislative representatives.

17. There are several other anomalies in the present structure of city government. As I have indicated, the budget constitutes the major policy document in the City and requires concurrent vote by the board of estimate and the city council. However, the concomitant duty to raise the taxes necessary to fund the budget rests entirely with the city council. The board of estimate, therefore, votes on expenditures of money but has no responsibility to vote for the taxes which fund the budget.

18. The second most important municipal legislative function is the adoption and modification of the zoning resolution. In New York City, this is in the exclusive do-

*Exhibit 3 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

main of the board of estimate, and the city council has no role. Thus for this quintessentially legislative function of determining land use, the board of estimate whose distribution of votes bears absolutely no resemblance to the number of citizens represented, acts alone while the city council which abides by a strict one person one vote principle, has no role.

19. As for the Board's power with respect to franchises and contracts, I understand that while these may not be strictly defined as legislative functions, they are functions which are performed by the city councils of other large cities having mayor-council forms of government.

20. I must say in conclusion, that I do not view this discussion as a contest for power between the board of estimate and the city council. It is my view that the city would be better served by a unicameral legislature with its various and diverse communities represented under those constitutional principles which require each person's vote to be weighed equally and which prohibit discrimination in the drawing of district lines. Whether the resulting body is called the board of estimate or the city council hardly matters at all.

/s/ Edward L. Sadowsky
Edward L. Sadowsky

Sworn to before me this 8th day of December, 1983.

/s/ Selma S. Krisel
Notary Public



**Exhibit (4): Annexed to the Appendix to Plaintiffs' Memorandum of Law**

UNITED STATES DISTRICT COURT

Eastern District of New York

82-CV-3920 (ERN)

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Beverly Morris et al.,

*Plaintiffs,*

—v—

Board of Estimate et al.,

*Defendants.*

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Affidavit of Steven J. Brams

I, Steven J. Brams, after being duly sworn upon oath depose and say as follows:

1. I am Professor of Politics at New York University. I hold a Ph.D. in Political Science from Northwestern University. I have specialized in the application of mathematical models to electoral systems, and have published several books and articles on the subject. My *curriculum vitae* is attached to this affidavit as Appendix A.

2. I submit this affidavit in support of Plaintiffs' contention that the structure of the New York City Board of Estimate affords vastly unequal representation to citizens of New York's different boroughs, and in opposition to the mathematical analysis employed by Intervenor-Defendant Ponterio (hereinafter referred to as "Intervenor.")

*Exhibit 4 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

3. My affidavit is divided into two sections. In Section I, I criticize Intervenor's "weighted vote" analysis of the Board. In Section II, I address other issues raised by Intervenor and by Plaintiffs.

*Section I*

4. Intervenor's so-called "adaptation of the aggregate method of analyzing floterial districts" (IA-10),* as applied to the Board of Estimate, is fundamentally flawed because it systematically overstates the voting power of the citywide representatives. As a result, population differences among the boroughs are made to appear unimportant.

5. The way in which Intervenor's "weighted vote" schemes does this can be seen by applying his method to a hypothetical City and Board which mirror the real City and Board. Imagine a City of 5 boroughs, A through E, with populations as follows:

| *Borough* | *Population* |
|---|---|
| A | 6 |
| B | 5 |
| C | 4 |
| D | 3 |
| E | 1 |

* References to "Intervenor's Affidavit" in Support of his Motion to Deem Issues Resolved will be made in the form "IA-page number."



*Exhibit 4 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

The total city population is 19. (Note that the borough populations are roughly proportional to the borough populations of New York City.)

Assume that the Board of Estimate in this model City duplicates the real Board of Estimate, consisting of 3 citywide representatives elected at large, with two votes each, and one representative from each borough, with one vote each. Following Intervenor's analysis, each citywide member's vote is weighted by the population s/he represents (19,) as is each borough member's.

| *Representative* | *No. of Representatives* | *Population Represented* | *Actual Votes* | *Weighted Votes* |
|---|---|---|---|---|
| Citywide | 3 | 19 | 6 | 57 |
| Borough A | 1 | 6 | 1 | 6 |
| Borough B | 1 | 5 | 1 | 5 |
| Borough C | 1 | 4 | 1 | 4 |
| Borough D | 1 | 3 | 1 | 3 |
| Borough E | 1 | 1 | 1 | 1 |

Total Citywide Actual Votes = 6

Total Citywide Weighted Votes = 57

Total Borough Actual Votes = 5

Total Borough Weighted Votes = 19

Intervenor's analysis has transformed the citywide members' actual 6-5 advantage in votes into a 57-19, or 3-1, advantage in weighted votes.*

* Moreover, Intervenor's methodology completely ignores the fact that citywide members have two votes each. His disclaimer ("The current 'votes' of Board members . . . are interpreted simply

*(footnote continued on following page)*

*Exhibit 4 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

6. The distortion is exacerbated when Intervenor computes weighted vote totals for various Board coalitions, and compares them with weighted-vote totals for an ideal Board in which all boroughs have equal populations. Because the *citywide* votes are improperly over-weighted under Intervenor's methodology (by approximately 3:1 [6:1 if methodology consistently applied—see footnote below]), *borough* population deviations from the ideal appear insignificant. This is true because all winning coalitions must include citywide members, whose weighted votes, under Intervenor's improperly skewed method, far overbalance the votes of Borough Presidents. (Recall that in arriving at "weighted votes," each citywide member's vote is multiplied by the entire City population, while each Borough President's vote is multiplied only by the population of his borough, largely swamping the effects of the very different-size boroughs in the weighted-vote totals.)

Thus, population disparities among the boroughs are effectively defined away in Intervenor's model, which makes the *three citywide members' votes* collectively count three (or six) times as much as the *five Borough Presidents'* votes, even though the citywide members enjoy a bare 6-5 majority in actual votes.

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*(footnote continued from previous page)*

as defining the coalitions of members which enable the Board to act" (IA-11) is illogical. If, as Intervenor argues, the residents of a borough are "represented once" when their Borough President casts a vote, they must be "represented twice" when a citywide member casts two votes. Therefore, Intervenor's analysis, carried through to its logical end, results in a citywide to borough weighted-vote ratio not of 3:1, as indicated in paragraph 5 above, but of 6:1.



*Exhibit 4 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

*Section II*

7. Intervenor's attempt to show that "Staten Island's opportunity to determine the outcome of city-wide elections is non-existent" (IA-20) fails in two respects. First, the data for past elections are mere happenstance. They demonstrate only that Staten Island's voting population is smaller than the other boroughs'. Second, since each citizen of the city casts one vote in the citywide elections, each citizen, regardless of residence, has an equal probability of casting a tie-breaking vote. The citizens of Staten Island have as meaningful an opportunity to elect citywide officials as do the citizens of the other boroughs.

8. The Board of Estimate's unusual structure creates problems in devising appropriate quantitative methods for analyzing citizen representation. The challenge this Court faces was recognized by the Second Circuit in its opinion in this case. But an examination of the underlying goals of borough and citywide representation on the Board provides guidance.

9. The Board is structured to assure representation of both local interests and the interests of the city as a whole. These interests will sometimes be in conflict; the Board's structure is an attempt to accommodate the clash between local and citywide concerns. Each citizen votes for officials who will represent his/her interests as a citizen of the city, and votes separately for a representative of his/her local interests.

10. I am of the opinion that *any* quantitative method for analyzing the Board that attempts to allocate the city-

*Exhibit 4 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

wide members' votes among the boroughs is inevitably arbitrary and *ad hoc.* To the extent that Plaintiffs have proposed models which do that, I disagree with them. In my opinion, the most appropriate methodology for analyzing the representation of individual citizens on the Board of Estimate is one which treats the two groups of representatives *separately.*

11. Since the citywide members are elected at large, they pose no equal-representation problem. The Borough Presidents, however, are elected from districts with vastly different populations, and it is their citizens who are denied equal representation, with residents of Staten Island (population: 352,121) having per capita representation approximately six times that of residents of Brooklyn (population: 2,230,936). Such an extreme *quantitative* disparity seems to me difficult to justify for political, historical, or any other qualitative reasons arising out of customs or tradition.

12. Plaintiffs have suggested that one way to redress representational inequalities on the current Board would be to create a structure featuring 19 single-member districts of nearly equal population, and to give citywide members 7 votes each. The creation of single-member districts would be one possible solution to the present problem. Other solutions might include a weighted-voting scheme carefully designed to avoid certain problems that may occur in such systems, or a proportional representation system geared to political parties, ethnic groups, or other appropriate interests. Whatever remedy is eventually adopted, it is clear that the *status quo* does not pro-



*Exhibit 4 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

vide equal representation to all New Yorkers, regardless of residence. I know of no grounds for permitting such an egregious violation of the one-person, one-vote principle in Borough representation.

/s/ Steven J. Brams
Steven J. Brams

Dated: November 21, 1983
New York, New York

Sworn to before me this 21st day of November, 1983

/s/ Melvin Goldstein
Notary Public

**Exhibit (5): Annexed to the Appendix to Plaintiffs' Memorandum of Law**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

81-CV-3920 (E.R.N.)

---

BEVERLY MORRIS, et al.,

*Plaintiffs,*

—v—

THE BOARD OF ESTIMATE, et al.,

*Defendants.*

and

FRANK V. PONTERIO AND ROBERT A. STRANIERE

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AFFIDAVIT OF EMANUEL TOBIER

I, Emanuel Tobier, having been duly sworn upon oath, depose and say as follows:

1. I am Professor of Economics and Planning in the Graduate School of Public Administration at New York University. I hold a Ph.D. in Economics from New York University. I have specialized in the economy and demography of New York City, and have published several articles on these subjects. I have also served as Chief Economist at the Regional Plan Association of New York from 1964-1968, and as Chairman of the City's Rent Guidelines Board, from 1974-1975. My *curriculum vitae* is attached to this affidavit as Appendix A.

2. United States Census data reveal that since World War II, and indeed, in the past decade or so, the characteristics of the populations of New York City's four large boroughs have changed dramatically. Brooklyn, the Bronx, and Queens, all once largely populated by white working-class and middle-class families, have seen large increases in their low-income, black, and Hispanic populations. Manhattan's population of poor people and racial minorities expanded through the 1960's, though it has declined in recent years.



*Exhibit 5 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

3. All four of the large boroughs are now marked by the diversity of their populations along income, racial, and ethnic lines. Only Staten Island has been relatively untouched by change in its population characteristics. Staten Island remains today, as it has been since World War II and before, a white, middle-class and working-class borough.

4. Distinct population groups in the large boroughs tend to settle in distinct neighborhoods. Thus it would easily be possible, using City Planning Commission data on income levels by community planning district,* to delineate several districts of approximately Staten Island's population in each of the larger boroughs. These districts would each in their own way be as homogeneous as Staten Island, and could be expected to exhibit relative uniformity of political interests.

5. For exampe, Table I (appended to this affidavit as Appendix B displays some of this data for Staten Island's

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* New York Department of City Planning, "1980 Census Data: Part One—Income; New York City, Boroughs, Community Districts," 1983.

three community planning districts, for districts 8, 11 and 13 in Queens, for district 3, 4, and 16 in Brooklyn. The three contiguous Queens districts encompass the neighborhoods of Bayside, Auburndale, Douglaston-Little Neck, Oakland Gardens, Fresh Meadows, Utopia, Pamonok, Kew Gardens Hills, Hillcrest, Briarwood, Jamaica Hills, Jamaica Estates, Glen Oaks, New Hyde Park, Floral Park, Bellerose, Bellaire, Queens Village, Cambria Heights, Laurelton, Rosedale, and Brookville. The data demonstrate that these districts have much in common with each other and with Staten Island. On the other hand, the three contiguous Brooklyn districts encompassing the neighborhoods of Bedford Stuyvesant, Bushwick, and Ocean Hill-Brownsville, obviously are quite different demographically from Staten Island, but relatively similar to each other. Staten Island, it can be seen, is fairly homogeneous.

6. In fact, it is fair to say that there is considerably more uniformity of population characteristics between neighborhoods in different boroughs than between neighborhoods within boroughs. Thus, for example, Bedford-Stuyvesant is more similar to the South Bronx than to Brooklyn Heights or Bay Ridge. Forest Hills is more similar to Bay Ridge or to Staten Island than to Jamaica.

7. In light of the heterogeneity of the large boroughs, it seems to me senseless to speak of "local interests" which encompass an entire borough, and can be represented by a single elected official, the Borough President. There really are no such interests. Instead, each borough contains various neighborhoods inhabited by different population groups whose interests can be expected to conflict strongly. No



single elected representative of a borough could be expected adequately to represent these conflicting interests.

8. Although the system of borough representation on the Board of Estimate may have been sensible when the population of each borough was less diverse than today, or when boroughs had strong borough governments which made them meaningful as political subdivisions, in my opinion it is now a historical anachronism. Maintaining this system serves largely to assist Staten Island in protecting its homogeneity at the expense of the rest of the City. Citizens of the larger boroughs are unavoidably denied fair and equal representation on the Board by this system which, on the one hand, grants to Staten Island its own representative, and on the other, submerges homogeneous communities of equal size within the extreme diversity of the larger boroughs.

/s/ EMANUEL TOBIER
Emanuel Tobier

Dated:
New York, New York

Sworn to before me this 13th day of December, 1983.

/s/ MELVIN GOLDSTEIN
Notary Public

## APPENDIX "B" TO AFFIDAVIT OF EMANUEL TOBIER

| | Staten Island Districts | | | Queens Districts | | | Brooklyn Districts | | |
|---|---|---|---|---|---|---|---|---|---|
| | #1 | #2 | #3 | #8 | #11 | #13 | #3 | #4 | #16 |
| Total Number of Families | 35,593 | 27,472 | 28,289 | 35,803 | 32,280 | 44,403 | 31,850 | 23,421 | 17,929 |
| Percent White Families* | 77.2 | 87.5 | 97.6 | 83.8 | 91.2 | 53.6 | 4.6 | 39.1 | 5.3 |
| Percent Black Families* | 14.9 | 1.1 | 0.5 | 7.7 | 15.8 | 37.3 | 83.1 | 27.8 | 85.4 |
| Percent Hispanic Families* | 7.3 | 3.4 | 3.0 | 8.99 | 3.3 | 6.7 | 13.3 | 57.3 | 15.5 |
| Total Number of Households | 48,438 | 33,564 | 32,405 | 50,469 | 41,430 | 61,160 | 48,227 | 30,141 | 23,952 |
| Percent Households Receiving Social Security | 27.6 | 22.9 | 19.1 | 27.8 | 28.5 | 25.7 | 18.8 | 17.2 | 18.9 |
| Percent Households Receiving Public Assistance | 10.6 | 5.4 | 3.8 | 5.0 | 4.0 | 6.6 | 34.4 | 39.1 | 39.1 |
| Median Household Income | $17,720 | $22,292 | $24,645 | $20,230 | $22,865 | $21,925 | $7,857 | $6,955 | $7,540 |
| Mean Household Income | $20,230 | $24,796 | $25,879 | $23,651 | $26,186 | $24,073 | $10,457 | $9,758 | $9,999 |





**Exhibit (6): Annexed to the Appendix to Plaintiffs' Memorandum of Law Submitted to the United States District Court Eastern District of New York**

**W. Sayre and H. Kaufman, *Governing New York City* (1960)**

GOVERNING
NEW YORK CITY

Politics in the Metropolis

WALLACE S. SAYRE
*Eaton Professor of Public Administration*
*Columbia University*

HERBERT KAUFMAN
*Associate Professor of Political Science*
*Yale University*

RUSSELL SAGE FOUNDATION
New York - 1960

# CHAPTER XVII

# The Board of Estimate

THE BOARD OF ESTIMATE occupies the center of gravity in the city's political process. Almost all other participants ultimately converge upon the Board because of the inclusiveness of its powers. The other participants may begin their efforts elsewhere—with the party leaders, or the Mayor, or department heads—but because the Board's consent is so often necessary before an action can be taken, most participants eventually must come to the Board. Some contestants prefer to begin with the Board.

The Board also provides, in its biweekly public meetings, the central stage for the city's political contest. On no other occasion can most of the participants be assured of an equally favorable opportunity to speak directly to so important a group of the city's decision-makers: the eight members of the Board (the Mayor, the President of the Council, the Comptroller, the five Borough Presidents) on the dais; the Deputy Mayor, the City Administrator, the Director of the Budget, and usually several department and agency heads in attendance near the dais; numerous interest group leaders on the list of speakers or in the audience; representatives of the press and other communication media present to report the proceedings to a larger public. All these together act as a powerful magnet to bring most of the participants before the Board, to speak directly to its members, to recruit allies, to refute competitors, to demonstrate their alertness and influence, to reach the ears of the general public.

The Board is, however, more than a center of gravity and the provider of a central stage for the city's political contest. The Board of Estimate as an institution is itself also a contestant, perhaps the most powerful single participant, in the city's political process. This power is the result of a number of extraordinary characteristics combining to make the Board a unique political and governmental institution. It has the most generous grant of formal powers of all the city's governmental institutions; its eight members are the most influential elected officials in the city government; it has developed a mode of operation which maximizes both its formal and informal powers; the relationships of its members with the party leaders are close and usually stable; it has high prestige with the other participants, particularly with those to whom it provides a public forum; and its institutional life, especially its informal processes, is surrounded by a helpful amount of mystery.







The story of the Board of Estimate is the history of an institution steadily acquiring more formal power, regularly enhancing its informal powers, increasingly fulfilling its own expectations as an institution. This institutional success has been achieved most clearly at the expense of the Board of Aldermen and its successor, the Council—but also at the cost of the Mayor.

## THE BOARD'S ASSETS: FORMAL AND INFORMAL

### *The Board's Formal Powers*

The Board of Estimate is endowed by the charter with broad powers, crucial to the city's political contest. These powers are in four categories: (1) those shared with the Council; (2) those exercised without Council participation; (3) the Board's "residual" powers; (4) Board powers subject to the Mayor's veto and those not subject to veto.

**Powers Shared with the Council.** The Council has "the sole power to adopt local laws . . . without requiring the concurrence of any other body or officer" except that the Mayor's veto requires a two-thirds vote of all councilmen to override, certain local laws must be submitted to referendum, and the Board of Estimate must concur in specified instances. These instances are described by the charter as follows: "A local law amending and repealing any provision of this charter, or transferring or changing the powers and duties of, or conferring powers or duties upon, or prescribing the qualifications, number, mode of selection or removal, terms of office or compensation of officers or employees of the city or of any agency, or reducing or repealing taxes, fees or charges receivable by the city or interest or penalties thereon, shall not become effective unless approved by the board of estimate." It has been difficult for the Council to discover local laws which do not come within this requirement. The Council consequently has no important power in adopting local laws which the Board does not share on equal terms; the Board is, in effect, the upper chamber in a bicameral city legislature.

The Board also shares with the Council its powers in the enactment of the expense budget, but on terms advantageous to the Board. For, while the Board may make any changes it wishes in the Mayor's executive budget, the Council in considering the budget as adopted by the Board of Estimate may only "reduce or omit any item in the budget . . . but it may not add or increase any item or vary the titles, description, terms or conditions of administration specified therein." Since the Mayor may veto any Council change in the budget, and a three-fourths vote of all councilmen is necessary to override the veto, the Board of Estimate may accurately regard the Council's share in the expense budget process as merely formal and symbolic, subtracting nothing of importance from the Board's monopolistic position.

In the enactment of the capital budget, the Board also must share formal power with the Council which may, in considering the capital budget

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adopted by the Board, "strike out in its entirety any authorization . . . but may not add to or increase or vary the terms or conditions of any authorization. . . ." If during the year the Board adds projects to, or increases the authorization for a project in, the capital budget, the Council's consent is required. The Council has found no way to use either of these powers as a device for sharing with the Board in the capital budget process.

In these three fields of formal powers—the enactment of local laws, the expense budget, the capital budget—the Board of Estimate has the dominant role. In the adoption of local laws the Board has an equal voice with the Council in all legislation of any importance; and the Board's greater institutional and political powers mean that, while the Board may usually influence the Council, the Council can rarely influence the Board. In both the expense budget and capital budget processes, the Board has the dominating role, the Council a minimal one.

Nor does the Board share these powers with the other participants in the city's political contest. The Mayor, the department and agency heads, and the City Planning Commission (in the capital budget process only) have their various roles, but it is the Board of Estimate which has the central role in each of these three processes.

**Board Powers Not Shared with the Council.** The Board of Estimate would be a powerful political and governmental institution if it had only the three preceding sets of powers which it shares with the Council on terms so favorable to itself. But the Board has many other powers which it does not share with the Council at all; it is these additional, unshared powers of the Board which make it the paramount city institution.

The additional powers may be discussed in the following five subcategories: (a) financial controls, (b) control of city property, (c) control of franchises, (d) control of city personnel, and (e) control of city planning and zoning. Many of these powers once belonged to, or were shared by, the Council's predecessor institution, the Board of Aldermen, but each of them has now belonged to the Board of Estimate for more than twenty years.

**Financial Controls.** The Board's preeminent position in the two budget processes and in local laws dealing with finance is supplemented by other powers in financial matters over which the Board has exclusive power, or has power shared only with the Comptroller, or, more rarely, with the Mayor. (The Comptroller and the Mayor always have their four votes each as members of the 22-vote Board; the reference here is to their separate powers in their own respective offices.) The most extensive and important of these financial powers is the authority of the Board to alter the expense budget during the fiscal year by transferring moneys from one major appropriation to another, and to authorize the Director of the Budget, subject to the Board's approval and upon an agency head's request, to transfer funds from one





budget line to another. These powers are so frequently and extensively exercised that the Board substantially remakes the budget during the year. The Mayor introduces the budget and the Council ratifies it after the Board is finished with its initial transformation of the Mayor's budget, but thereafter the Board (aided by its trusted agent, the Budget Director) is undisputed master of the expense budget's many changes during the fiscal year.

The Board has other significant financial powers: it has the power and duty "to fix the salary of every officer or person whose compensation is paid from the city treasury" except as otherwise provided by law; to approve the rates to be charged for water, wharfage, parking, lease of city property; to regulate the letting of contracts, to set standard specifications for city purchases, and to regulate the disposal of surplus property and materials. Nor are these all: the Board of Estimate supervises the "assessable improvements" system of the city, the Board's Chief Engineer approving those costing less than $10,000, the Board itself acting upon all other proposals of Local Improvement Boards in each Borough or taking the initiative itself.

The cumulative fiscal controls of the Board of Estimate are so inclusive and so central that the Board in this field of the political contest overshadows both the Council and the Mayor; only the Comptroller could give the Board significant competition in financial matters, and he is usually a member of the Board's "inner circle."

**Control of City Property.** "No real property and no interest thereon may be acquired by the city," declares the charter, "and no real property of the city may be sold, leased, exchanged or otherwise disposed of except with the approval of the board of estimate and as may be provided by law unless such power is expressly vested by law in another agency." In addition to this control over the acquisition and disposal of city property, the Board has control over the use of city property, having the power with the Mayor's approval "to assign to use for any public purposes any city property, for whatsoever purpose originally acquired, which it may find to be no longer required for such purpose and may assign space in any city building to any agency."

**Control of Franchises.** The power to grant franchises once belonged to the Board of Aldermen, but in 1905 it was transferred to the then existing Board of Estimate and Apportionment. The charter now provides that: "The board of estimate shall have the control of the streets of the city, except as in this charter otherwise provided, and shall have the exclusive power in behalf of the city to grant franchises or rights or make contracts providing for or involving the occupation or use of any of the streets of the city, whether on, under or over the surface thereof, for railroads, pipe or other conduits or ways or otherwise for the transportation of persons or property or the transmission of gas, electricity, steam, light, heat or power, or the installation of trans-

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former vaults, and to give the consent of the city to any franchise or right of any kind or nature whatsoever for or relating to the occupation or use of the streets of the city under the provisions of the constitution or of any statute."

To this control over franchises by the Board is added its control over "revocable consents." The charter provides that: "Consent to construct and use for private use pipes, conduits and tunnels under, railroad tracks upon, and connecting bridges over any of the streets of the city shall be by resolution of the board of estimate . . . revocable at any time by resolution of the board of estimate. . . ."

The resolutions of the Board with respect both to franchises and to revocable consents require "the separate and additional approval" of the Mayor, a provision which gives the Mayor one of his rare veto opportunities in dealing with the Board—and this particular veto is of course an absolute veto.

Control of City Personnel. The Board of Estimate, in addition to the control over compensation noted above under the Board's financial controls, has other personnel controls. "The board of estimate may at any time," says the charter, "subject to the provisions of this charter and of the civil service law and except as otherwise provided by statute, create, abolish or modify positions and grades of persons paid from the city treasury." In 1954 a new and ambiguous provision was added to the charter, giving to the newly established Director of Personnel the power "to develop salary and wage plans and standard rules governing working conditions, vacations and leaves in agencies of the city for submission to the mayor, the board of estimate, the civil service commission, the city administrator and the budget director." The Personnel Director and the Budget Director have since acted upon the assumption that this new section, when read in the context of other Board powers, requires the approval of the Board of Estimate for all such plans and rules. The Board also has another personnel power of great importance; it is "the head of the New York City employees' retirement system" and in this capacity, subject to other provisions of law, has the power to "establish rules and regulations for the administration and transaction of the business of the system and for the control of its funds."

These personnel powers of the Board are not so inclusive as the powers it wields in finance, in property, or in franchises—largely because the state Civil Service Law controls so much of personnel management—but the Board's personnel powers nevertheless exceed those of the Mayor, and, of course, greatly overshadow those of the Council.

Control Over City Planning and Zoning. From 1916 to 1938, the Board of Estimate and Apportionment exercised the powers of zoning and other planning functions, still earlier a prerogative of the Board of Aldermen. The establishment of the City Planning Commission in 1938 reduced the powers of the Board of Estimate in zoning and planning by requiring the Board to





act by a three-fourths vote in setting aside any provision of the master plan or of the zoning regulations adopted by the Planning Commission. The Board has not lost its commanding position, however, the Planning Commission having as yet failed to develop either a comprehensive master plan or a comprehensive new zoning ordinance.

These five types of powers exercised by the Board of Estimate without participation by the Council—financial, property, franchise, personnel, planning—make the Board the central institution in the city's political contest, especially when they are combined with the powers which the Board shares with the Council, on the favorable terms which the Board enjoys through its influence over the Council. But the Board has still other powers and advantages in its relationship to other participants in the political contest.

The Board's "Residual" Powers. The charter declares: "The board of estimate, subject to this charter, shall exercise all the powers vested in the city except as otherwise provided by law." The Board is thus heir to all the powers vested generally in the city unless the power is clearly lodged by law in some other agency. In all cases of ambiguity, the Board has the strongest claim to jurisdiction, a claim which before 1938 could be asserted by the Board of Aldermen. The clause has not seen much formal use, but its psychological uses are considerable and its very ambiguity serves to expand the Board's strategic opportunities.

The Board and the Mayor's Veto. Most of the powers exercised by the Board of Estimate are beyond the reach of the Mayor's veto powers. He may veto local laws after their passage by the Council and by the Board. If he does veto such a local law, only the Council, by a two-thirds vote of all councilmen, may override it (the Board having no further part in the proceedings). The Mayor also has an absolute veto over two types of resolutions by the Board: those dealing with franchises and revocable consents and those assigning city property to a new use.

In all its other powers, the Board is confronted by no threat of a veto. The Mayor may cast his four votes on a resolution, but he may not exercise the usual prerogative of a chief executive by entering a veto. The Board having acted, the Mayor's signature is not needed. Considering the range of these Board powers exempt from chief executive veto, the advantage to the Board is substantial.

The formal powers of the Board of Estimate—those shared with the Council plus those exercised independently of the Council, plus the Board's residual powers, plus its freedom in most areas from the Mayor's veto—make the Board a formidable institution. In the distribution of the stakes of the city's politics, the Board has only one close competitor for preeminence—the mayoralty—and in this competition the Board has important resources in addition to its great array of formal powers.

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### The Board's Membership

One of the Board's greatest assets is the nature of its membership. Its eight members, the most prominent elected officials in the city, are each elected to and held primarily responsible for their performance in, another office. That is, all membership in the Board of Estimate is *ex officio;* no one is elected directly to the Board. Each member thus brings to the Board not merely his allotted number of votes (four each for the Mayor, the Comptroller, the President of the Council; two each for the five Borough Presidents), but also the power, the facilities, and the prestige of his own separate office.

The member's role in his own office is the one he emphasizes to his electoral constituency; his role in the Board is largely reserved for the low-visibility bargaining which the Board's procedures enhance. The Board as a formal institution is highly visible, especially in its biweekly public meetings, but its decision-making process is one of quite low visibility. Its members thus enjoy the exercise of power in its proceedings without the penalties of individual responsibility; for all the members except the Mayor, who cannot ordinarily obscure the nature of his role in the Board, this opportunity to exercise power without the costs of direct responsibility is a cherished asset.

**The Mayor.** As chairman of the Board (when he personally attends) and as the official upon whom the widest public expectations are focused, the Mayor is the most visible and prominent member of the Board, but he is rarely its master. The great political and governmental powers of the mayoralty (to be discussed in the following chapter) represent the major institutional rival of the Board in the city's political contest, but as a member of the Board the Mayor is operating on his rival's home ground, mainly under rules and customs devised by the Board itself. The Mayor, by his very membership and by his participation in the Board's executive session deliberations, is inhibited in his other strategies, for he is thus ordinarily shorn of his capacity as elected chief executive to appeal from the Board to his own broader constituency. The Mayor's membership on the Board is an asset to the Board, a liability to the Mayor.

**The President of the Council.** This office, like that of Vice-President of the United States and of Lieutenant Governor in the state, is one of ambiguity and inhibited anticipation. In itself, the office is the purely formal one of presiding officer over an institution of secondary importance; it acquires its major importance from its incumbent's four votes on the Board of Estimate, but this role has its dilemmas; the real importance of the office lies in the chance that the President of the Council may become the Mayor by succession or election. This chance became reality for Mitchel and Impellitteri; McClellan, La Guardia, Morris, and Halley all held the office before their nominations for Mayor.





As a member of the Board, the President of the Council brings to its bargaining processes the fewest assets of any of the members. His staff is small, far from matching the staffs which bring to other members the information and advice that equip them with bargaining power; his opportunities to appeal to a broad and distinctive constituency of his own are limited; his efforts to carve out a function for himself invariably tread upon the jurisdictional toes of powerful rivals. To exercise influence beyond the weight of his four votes—indeed to give them any significance—the President of the Council is faced with a perennial dilemma: whether to join his fortunes with the Mayor, or to move toward the orbit of the Comptroller and the Borough Presidents. Each alliance has its risks for an official who has few resources for defense against others.

**The Comptroller.** This official is the potential giant of the Board. His formal powers in his own office do not match the Mayor's, but they are solid powers of great importance and they fit comfortably into the powers of the Board as an institution. As a member of the Board, the Comptroller's substantial official powers serve as a magnet to draw around him the rivalries toward the Mayor felt by the other members, and thus to make the Comptroller the focus and the guardian of the Board as an institutional rival to the Mayor. In the degree to which the Board of Estimate is comparable to the United States Senate as a "citadel" or "club," the Comptroller is the central member of the "club."

The Comptroller, not the Mayor, is the city's chief financial officer. He combines in his fiscal powers most of those exercised at the national level by the Secretary of the Treasury, the Comptroller General, the Council of Economic Advisers, and some others. His advice is directed, not to the Mayor, toward whom he has no charter responsibilities, but to the Board of Estimate primarily, to other agencies in some instances, and often to the Comptroller's own public constituency. A brief recital of his powers demonstrates their substance and their scope.

The Comptroller is authorized by the charter to "advise the board of estimate on the financial conditions of the city or any phase thereof and make such recommendations, comments and criticisms in regard to the operations, fiscal policies and financial transactions of the city as he may deem advisable in the public interest"; "to investigate all matters relating to or affecting the finances of the city" with the power of subpoena and taking testimony under oath; the "power and . . . duty to audit all vouchers before payment and prepare warrants, to audit all official accounts and to audit annually the accrual and collection of all revenues and receipts and to prescribe methods of recording, reporting and accounting in the several agencies"; "to settle and adjust all claims in favor of or against the city"; "administer and manage the several sinking funds of the city and all other trust funds held by the city";

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"keep the accounts of the city"; publish annually "a full and detailed statement of the receipts and expenditures of the city and the cash balance or surplus at the end of the year, the different sources of city revenue and the amount received from each, the several appropriations made, the objects for which they were made and the amounts of moneys expended under each, the money borrowed on the credit of the city, the amount of each loan, the authority under which it was made and the terms on which it was obtained." These are substantial powers of financial administration in any government, but the Comptroller's powers do not end here.

Four times during each year the Comptroller has an opportunity to issue formal statements of great public and political importance—one designed to influence the size and nature of the expense budget, one to influence the tax rate on real property, one to influence the city's debt policy, and a fourth to influence the size and content of the capital budget. These messages are issued, with ceremony and emphasis, from the Comptroller's office on the fifth floor of the Municipal Building, after careful attention not only to the requirements of the charter and the city's finances but also to the political role of the Comptroller in the city government. These reports of the Comptroller provide varying strategic and tactical opportunities—sometimes to lecture the Mayor, often to woo the banking and real estate constituencies of the Comptroller, usually to pose before the communication media as financial statesman.

The first of these messages flows from the charter requirement that "not later than the fifteenth day of February in each year, the comptroller shall submit to the board of estimate . . . a certified statement . . . which shall contain," among other things, an estimate of receipts for the coming fiscal year from all sources except real estate taxes, a statement of tax collections and the tax deficiency account, the condition of the several city funds and the requirements of debt service. This statement sets the stage for the Budget Director and the Mayor in their preparation of the executive budget. The Comptroller may be pessimistic or optimistic, according to his mood, or strategy, or judgment; his predictions control the range of discretion for all the decision-makers in the budget process.

The second message comes from the charter provision that "the comptroller shall prepare and submit to the council, between the fifteenth and twentieth days of June, a statement setting forth the amount of the budget as fixed for the ensuing fiscal year and also an estimate of the probable amount of receipts into the city treasury . . . from all the sources of revenue of the general fund." These two figures (and the Comptroller has great discretion in estimating the second) control the Council, when the total assessment of real property is reported by the President of the Tax Commission, in fixing the real estate tax rate. The Comptroller may, when he wishes, anticipate the





June date of the charter by issuing his first estimates as early as mid-April, as he did in 1957 with the good news of a tax reduction which the Mayor no doubt would himself have enjoyed announcing.

The Comptroller's third opportunity arises out of the charter's injunction that "not later than the fifteenth day of August in each year, the comptroller shall submit . . . a report . . . setting forth the amount and nature of all obligations authorized on account of each pending capital project, the liabilities incurred for each project outstanding on the first day of July and setting forth and commenting in detail upon the city's financial condition and advising as to the maximum amount and nature of debt which in his opinion the city may soundly incur for capital projects. . . ." The Comptroller usually chooses to play a jeremiad role on this occasion, lecturing all upon the virtues of economy, reassuring the banking, lending, and tax-paying constituencies with his doctrines of economy and stability. The size of the capital budget is largely determined by the Comptroller's optimistic or pessimistic mood in this message.

The fourth message rests upon the charter requirement that "not later than the fifteenth day of November, the comptroller shall submit to the board of estimate . . . a report . . . containing such comments and recommendations with respect to the proposed capital budget and program as he may deem advisable." The Comptroller usually deems it advisable to urge economy, to select priorities suited to his own preferences, and to emphasize his alertness and that of his office to the austere requirements of sound city finances. The Board of Estimate's choices among capital projects is greatly influenced by the Comptroller's mood and preferences in this message.

No other city official has such timely and carefully staged opportunities to influence fiscal policy as these four messages provide to the Comptroller. But the Comptroller has still other assets as a participant in the Board of Estimate.

He may authorize the expenditure of moneys from the capital accrual and the real property funds, has custody of the securities in the four sinking funds of the city and determines the investment of their moneys, approves payments to Borough Presidents for their expenses in assessable improvements, settles claims for assessments, inspects and accepts or rejects all deliveries of supplies, materials, or equipment for the city, with the Mayor and Treasurer (by majority vote) selects the banks or trust companies in which all moneys of the city are to be deposited and fixes the rate of interest these institutions must agree to pay in order to qualify as depositaries, and supervises the collection of the excise taxes of the city.

The Comptroller brings to the Board the power and prestige of the city's chief financial officer and of an official elected by a citywide electoral constituency. He can also, and usually does, draw to his support the real estate and banking groups of the city. All these assets make him an object of constant

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public attention, exceeded only by the attention-drawing capacities of the Mayor and matched only by those of Commissioner Moses and the Police Commissioner. His formal powers and his public status combine to make him the pivot of the Board of Estimate, especially in that institution's rivalry with the Mayor. The upper limits of his opportunities are also clear. No comptroller has ever been nominated for the mayoralty nor has any ever held a higher elective office afterward.

**The Borough Presidents.** These offices were once, a half century or less ago, important administrative establishments. Successive charter amendments and revisions have transferred one after another of their former functions to centralized city departments under the Mayor. The Borough Presidents now are primarily significant as members of the Board of Estimate rather than as heads of administrative activities at the five Borough Halls.

The Borough Presidents retain some important administrative functions, primarily relating to the building and maintenance of the boroughs' local streets, roads, bridges, and tunnels, regulating certain uses of the streets, and control of borough sewers and drainage systems. That is, each Borough President heads his borough's public works activities; but these are steadily reduced in significance as borough streets become arterial highways, as the bridges and tunnels are made parts of larger systems, and other agencies (for example, the public authorities) build parkways and expressways across their boroughs. The Borough Presidents would be minor officials if they were no more than the heads of their respective administrative domains.

It is in the Board of Estimate as representatives of the boroughs (coterminous with the counties, around which the political parties shape their organizations), that the Borough Presidents achieve their importance as officials. Each speaks for his borough, and behind him perceptive observers (other members of the Board, especially) can usually see the strength of his County Leader, or at least a group of Assembly District Leaders, as well as a borough constituency of uncertain but tangible dimensions.

The Borough Presidents bring to the Board neither the impressive formal powers of the Mayor or of the Comptroller, nor the ambiguous potential of the President of the Council; instead, each Borough President brings to the Board a consciousness that he represents a county party organization with which (unless he is a Fusion official) he ordinarily has close ties, and that he has the formal capacity to claim that he speaks, as no other member of the Board can, for the special interests of his borough. These are claims difficult to dispute, risky to ignore. Moreover, the Borough Presidents sense their common cause as a group in the Board, maintain together a practice of "borough courtesy" which they often succeed in persuading the citywide members to observe, while in addition they seek to join with the Comptroller in a bargaining alliance which can guide the Board in the majority of its decisions. These





tendencies are less pronounced, less regular in pattern, but present nevertheless, in a Fusion administration because the relationship between Borough Presidents and County Leaders is then less stable or even nonexistent.

Six of the eight members of the Board add important assets to the Board as a political and governmental institution. The Comptroller and the Borough Presidents find that strengthening the Board is also a way of strengthening their own offices. The Mayor, on the other hand, contributes to the Board's strength mainly by subtracting or surrendering some of the separate assets of the mayoralty. The President of the Council, with four votes as his only lever, is most often neither an asset nor a liability to the Board.

The Board thus adds to its impressive formal powers the great strength of its members individually and collectively, and to these two assets it also adds a third: the aptness of its procedures to the conservation and enhancement of its influence as a participant in the city's political contest.

## *The Board's Procedures*

The charter imposes only a few simple procedural restrictions upon the Board of Estimate. There are several requirements for a two-thirds or three-fourths majority and a few requiring unanimous action, but most acts may be "by resolution adopted by a majority of the whole number of votes authorized to be cast by all the members of the board"; that is, by 12 votes out of 22. The charter further provides that "no resolution or amendment of any resolution shall be passed at the same meeting at which it is originally presented unless by a three-fourths vote or shall be finally passed except at a meeting open to the public." A quorum of the Board is defined by the charter as "a sufficient number of members thereof to cast 12 votes, including at least two of the members authorized to cast four votes each." The first meeting of the Board each year is called by notice from the Mayor; thereafter, the Board itself determines its own schedule. The Mayor, or in his absence the President of the Council, presides at all meetings. The Board must keep a journal of each meeting, which is a public record, and a full stenographic record of all public meetings must be kept on file also as a public record, a transcript being available to "any taxpayer" on payment of "reasonable fees." Except for these charter requirements, the Board "may adopt rules for the conduct of its proceedings not inconsistent with the provisions of law, and such rules shall not be suspended at any meeting except by affirmative vote of two-thirds of the votes which all members present are entitled to cast."

**Committees of the Board.** The Board of Estimate chooses not to make much use of committees. In its earlier history, the Board had almost a score of standing committees and many special committees in addition, but these were gradually abandoned in the 1920's. Today only two standing commit-

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tees remain: the Committee of the Whole, and the Committee on the Acquisition and Disposition of City Property (composed of the Mayor, the Comptroller, and the President of the Council). The use of special committees has almost disappeared.

Although any such small body would find limited use for committees, the Board also finds little use for committees because it wishes to avoid any public revelation of division within its membership. Committee action, with its prospects of majority and minority reports, and the further possibilities of Board rejection or division, would cut across the strong institutional drive of the Board to achieve unanimity in all its public proceedings.

**Bureaus of the Board.** The Board of Estimate has found a substitute for committees in its staff bureaus. Of these there are four. the Bureau of the Secretary, the Bureau of Franchises, the Bureau of Engineering, and the Bureau of Retirement and Pensions. The Board also tends to regard the Bureau of the Budget, the City Planning Commission, and, to a growing extent, the Department of Personnel, as staff agencies of the Board. To these seven bureaus (especially to its own four and to the Bureau of the Budget) the Board refers the great bulk of those matters which it once referred to committees of its own members.

This use of well-staffed bureaus has many advantages for the Board as an institution. It provides the Board with expert information and advice; it helps to make the workload of the Board manageable; it gives the members of the Board the time, and perhaps even the alternatives, for the bargaining which is the Board's essential *modus vivendi*. Even more important to the Board is the fact that the bureaus in their work and their reports do not threaten the collective unity of the Board in its public decisions. The members need not commit themselves prematurely; when the bureaus do report, the Board still has time, if more time be needed, to bargain out a formula for unanimity.

**No Public Debate.** The Board of Estimate is further aided in its search for a public show of unanimity by its tradition of listening to others in its public meetings but avoiding debate among its own membership. In its biweekly public meetings the eight members of the Board sit *en bloc* on a raised dais, facing their audience and the speakers who wish to address them. The Board's public proceedings thus resemble in part the public hearing of a legislative committee—but without some of the substantial characteristics of such a hearing (for example, the purposeful interrogation of witnesses, the analytical development of issues and alternatives). The members of the Board may listen without comment, they may encourage or heckle the speakers, they may twit or praise each other, or they may make relevant or irrelevant declarations from time to time.

Whatever the variations in member behavior, no systematic presentation, defense, or criticism of proposed public policy emerges from participation in





the discussion by the members of the Board themselves. The accepted fine art of Board behavior is to listen, to question, to display knowledge and alertness—but to avoid commitment either in sustained debate or in explicit declaration of policy.

This protocol of Board behavior is not infrequently breached by intransigent members only partially committed to the Board's values and traditions of sacrificing public debate to private bargaining, but these occasions produce bickering rather than a structured discussion of the issues. The procedures of the Board are not designed, and in fact make it almost impossible, for the members to oppose each other in the form of legislative debate: the calendar is long, the speakers' list is often extensive, the expectations of the audience are for a public hearing, not a Board debate—and the Board would not wish any of these arrangements to be otherwise.

**Uses of Postponement.** If the Board of Estimate is not a publicly deliberative body, it is nevertheless a deliberate one. It does not engage in a final public vote until all the avenues to unanimity have been patiently explored. On most matters its rules ensure against precipitate tests of Board unity; an item on first appearance is typically referred to a bureau of the Board or to the Budget Director. (It is a matter of some significance that the greatest number of referrals from, and reports to, the Board involve the Budget Director.) If an item returns to the calendar before agreement has been worked out within the Board, or if unanticipated public opposition appears, the offending item may be laid over until a later meeting, and this process may be repeated, if necessary, until the effort to find a formula, or an occasion, for unanimity has been successful.

Postponement does not often embarrass the Board. Its calendar contains so many items that to "lay over" or "refer" one fourth to one half of the items is a practice taken for granted by all participants and observers. Subterfuge is not involved; the postponed item must eventually come back to the public calendar or die in the files. No habit of the Board is so deeply imbedded, and so rarely challenged, as is its practice of delay.

**Ad Hoc Decisions; Minimum Delegation.** The Board of Estimate uses legislation sparingly; in fact, it ordinarily succumbs to the enactment of general rules, under which others may exercise discretion, only when local laws are before it. In the exercise of all its own powers, the Board makes no general rules, delegates no final authority, but instead requires each successive instance to come before it for Board action. When it does vary from this code of behavior, an infrequent aberration, it is more likely to do so for the Comptroller or the Budget Director than for the Mayor or any of his agencies.

The Board thus conserves its powers as an institution, and as a participant in the city's political contest, by requiring that every separate decision within the reach of its broad jurisdiction shall come before it for final action. This

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practice confronts the Board at each meeting with a calendar of from 200 to 600 separate items, totaling during the year as many as 15,000 calendar items, of which perhaps half are nonduplicating. Nor is this a new phenomenon; in 1928, the Board disposed of 12,000 items.

The Board reveals no disposition to change this practice of avoiding delegation to others under legislation or general rules enacted by the Board. To modify this pattern would reduce the political and governmental powers of the Board, while increasing those of the Mayor and of the agencies more responsive to his direction. If it is to hold and enhance its role as a participant in the city's political contest, the Board as an institution must retain its detailed, specific decision-making opportunities even though these practices carry the Board deep into the territory usually regarded as the prerogative of the chief executive and the administrative agencies under his supervision.

**Executive Sessions of the Board.** The key to the Board's procedural system are its "executive sessions," formally the meeting of its committee of the whole, to which a day or more is devoted by the Board shortly preceding the day of its public meeting. The sparse use of committees, the use of bureaus as substitutes for committees, the tactics of postponement, and the avoidance of general legislation—all these depend for their effectiveness upon their culmination in the executive session, where the Board finds the optimum conditions for its special role in the city's political contest.

The executive session of the Board meets to consider a calendar of items virtually identical with those which will concern it a day or two later in its public session. But now the Board meets behind closed doors, in the presence of its own members, their selected assistants, and such other public officials as may have been invited by the Board. There is no record of proceedings; all is informal and confidential. The Board's bureau chiefs and the ubiquitous Budget Director do most of the briefing of Board members on particular items. The members of the Board then disclose their initial sentiments. On many familiar items there is a quick establishment of unanimity, frequently aided by the bureaus' capacity to anticipate the formula which will unify the Board. When agreement proves difficult, the Board will usually clear the room of all nonmembers and then proceed to a bargained adjustment of their differences or to an agreement to delay. When the day's executive session is concluded, the Board knows which items will be on its public calendar for action that week and which will be held back for further negotiation; it knows which items will be unanimously enacted, or the extent and nature of any unavoidable dissent by members in public; it knows which items on the public calendar will be "laid over" for a future public meeting, and which items will be referred to whom for "further study."

The blueprint of Board behavior at the next public meeting is thus laid out in detail, and it is understood that each Board member is by his participation in the executive session now fully committed to its agreements. Only the rare





event of a strong, unanticipated public reaction at the public meeting, or in the communication media, will upset the Board's predetermined course of action—and for that eventuality, the Board also has a settled formula: the item will be laid over. Another executive session of the Board will subsequently dispose of it in terms suited to the Board's carefully considered reappraisal of the bargain earlier arrived at.

It is in its executive sessions that the Board reaches the peak of its strength and genius as a political and governmental institution. It is here that the Board's influence as a participant in the city's political contest is at its highest. For it is in these executive sessions of the Board that the Mayor, with his great separate powers and high public status, is disarmed and humbled and made a prisoner of the Board's cult of unanimity. It is in these executive sessions, too, that the Budget Director is most fully absorbed into the Board's orbit of influence, the City Planning Commission brought to terms preferred by the Board, and other overhead and line agencies made to feel the benefits of alliance with the Board or the penalties of divergence.

The executive session of the Board is in essence a caucus. Those who attend are committed to its private bargaining processes. They are committed also to abide by its decisions except where the members as a matter of grace concede to a particular member his special necessities to record a public dissent, but such a privilege must not be too often claimed, nor can it be exercised in a way to disclose the secrets of the caucus. Those who would like to stay away, and thus remain uncommitted, are faced with the price of being uninformed, of being outside the bargaining process, of being subject in many ways to the sanctions and displeasure of the Board. The consequence has been that, with rare exceptions, all members attend the caucus, accept its rules with only infrequent displays of insurgency, and subscribe increasingly to the caucus objective of private bargaining followed by public unanimity. While the caucus system has its difficulties and variations under a Fusion Board, the net result is less than drastic in its difference.

**The Cult of Unanimity.** The Board of Estimate as an institution of power and influence in the city's political contest would be most vulnerable in its public meetings if those who guide its destinies had not long been at special pains to maintain the unity of the Board when it meets in public. Its standing and special committees were long ago absorbed into its caucus system, its bureaus have been developed as an aid to unanimity, public debate has been avoided, and the executive session has been refined into an institutional guarantee of public unity. The public meeting of the Board now convenes to confirm, and to give legitimate effect to, the decisions earlier made in full detail in the executive session.

The outcome is an institutional miracle. Some public meetings of the Board, with more than 300 separate items (often with more than 500), will record not a single dissenting or abstaining vote. Others will reveal a single

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item on which a dissent is registered, while dissent on as many as five items is extraordinary. In 12 meetings selected at random during 1955, with calendar items for the 12 meetings amounting to 4,958, only 11 "split votes" were recorded—3,141 being unanimous, the remainder "laid over," referred, or filed. Even when the "routine" nature of many items (themselves an index of detailed Board control) and the disposition of small, intimate bodies to be unanimous in public votes are both taken into account, the Board's unanimity is impressive and unusual. The temptations of the members to use the powers and opportunities of their separate offices, to appeal to their own public constituencies, have obviously been curbed. Even the Mayor must usually sit mute, committed to the bargains of the executive session, bargains purchased most often at the price of mayoral concessions to other members of the Board.

The procedural system and traditions of the Board of Estimate reflect an institutional genius for adapting the Board's formal powers and its membership to a pattern of operations which conserves and maximizes the Board's influence as a major participant in the city's political contest. The Board has been successful in absorbing rather than surrendering power, in curbing the powers of the Mayor, its most influential rival in the political contest, and in doing these things so unobtrusively that other participants have found few opportunities to complain.

## THE BOARD AND OTHER MAJOR PARTICIPANTS

The Board of Estimate has such extensive powers that it attracts the constant attention of the other important participants in the political contest. We have seen how several of the line agencies are drawn into the Board's orbit, how some of the overhead agencies are absorbed into alliance with the Board, and how several of the organized bureaucracies focus their efforts at influence upon the Board. We have seen also how the Council operates in the Board's shadow, and we shall see in the next chapter that the Mayor is deeply involved with the Board in a rivalry in which the Board has at least a net advantage of position. But two other major participants—the party leaders, and the nongovernmental groups—will be discussed here.

### *The Party Leaders and the Board*

The members of the Board of Estimate hold the eight most important elective offices in the city government. Nominations to these offices lie more completely within the influence of the party leaders than that of any other participant in the political contest. Election to these offices involves the efforts of additional participants, but the role of the party leaders is still ordinarily a dominant one. Further, the eight members of the Board usually aspire to renomination and reelection, or else they hope for other and higher posts on the party or governmental career ladder—aspirations which, in





either event, are subject to the important if not conclusive influence of party leaders. The ties between the members of the Board and the party leaders (especially the five County Leaders) in most instances are consequently direct, frequent, and of importance both to the officials and to the party leaders.

The links of a member of the Board with his party organization are almost always closest with the County Leader of the borough in which the member resides. Of these relationships, those between the County Leader and the Borough President are the easiest to work out and to maintain. These two have the same jurisdictional boundaries; their working relationships can be relatively uncomplicated. The three members with citywide constituencies (the Mayor, Comptroller, and President of the Council) have a more difficult pattern to work out. The Comptroller and the President of the Council are usually most closely linked to the County Leader in their respective home boroughs, but they each must also work out some relationship with the other four County Leaders as a way of recognizing the contribution which those leaders made to the official's nomination and election, and the role the leaders will play in future nominating and electing situations. The Mayor has an even more difficult problem; he must seek to deal with all five County Leaders on a plane of equality among them.

Where collective Board of Estimate action is concerned, each County Leader relies most frequently and regularly upon his Borough President. The Borough President is the official spokesman for the borough and county; he is usually more indebted to and dependent upon the County Leader than are the citywide officials; and his lighter official duties make him more accessible to the party leader. The County Leaders also court the Comptroller, both for his own separate powers in finance and for his influence in the Board; his 4 votes, when added to the Borough Presidents' 10, constitute a comfortable majority of the Board's 22. The Comptroller's tendency and capacity to polarize around himself the balance of bargaining power in the Board is an additional attraction to the party leaders, especially on issues where the Mayor is giving them difficulties. The President of the Council is less often an object of attention from the party leaders.

For the Borough Presidents and the Comptroller, the main significance of their relationship to the County Leaders is that it strengthens the hand of the Board against the Mayor. The working alliance has a similar attraction for the party leaders; the Board helps them often to restrain the impetuous tendencies of Mayors who are more responsive to their broad constituencies than to party organization advice. The Board's procedural system makes the working relationships between the party leaders and the Board members an unobtrusive and easy process. Access to the executive session is restricted, the party leaders cannot be present, but they have favored, indirect entry. The

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Board's methods give time, too, for full communication, provide a time and place for bargaining in the Board's executive sessions, and the secrecy of the caucus surrounds the party leaders' intervention through the Borough Presidents or other members. For all the official and party participants except the Mayor (and perhaps on occasion the President of the Council), the pattern is one of optimum arrangements: maximum exercise of influence with minimum risk of accountability.

### *Nongovernmental Groups and the Board*

The public meetings of the Board of Estimate are the great gathering place of the nongovernmental participants in the city's political contest. They come by the hundreds, perhaps even thousands, during the year—by scores to a major budget session, in considerable number to other meetings, and the Board is rarely confronted by an audience with no representative present, able and anxious to speak. Their leaders come to support or object to an item, to lecture or cajole, to threaten or to plead, to praise or to criticize. Often their fire is aimed as much at each other as at the noncommittal members of the Board. They come mainly because no other forum in the city matches, for their purposes, the forum provided by the Board in its regular schedule of meetings, the presence of high officialdom, the focus of the communication media, the attendance of allies and competitors.

Some nongovernmental groups give specialized attention to particular parts of the Board's agenda; others watch over the whole calendar of the Board. Some appear infrequently; others are in almost constant attendance. The budget sessions bring out almost all of them. Some address the Board as strangers, some on the basis of long and close acquaintance. Toward some the Board is friendly, tolerant, even indulgent; towards others it is aloof, occasionally biting. On the whole, the Board enjoys its role in the sun of public attention, treating its speakers and its audience as valued assets. Seldom is such prominence for all the participants (Board members and speakers alike) purchased at similar bargain rates.

The consequences of these repeated appearances of many groups before the most prominent and the central public forum of the city government are not easy to assess, or even to identify. The most pervasive result is a widespread sense of participation; no group is alienated from the city's political process when its leaders can speak directly to the city's most prominent officials, in the presence of the representatives of other groups of the highest prestige. For the leaders and members of these groups, there is a valued opportunity to be informed by others, to become a part of an informed electorate, however briefly on however narrow an issue. For the leaders of the nongovernmental groups, there is also the more tangible reward of demonstrating to the group's own membership the worth of the association and the alertness of the leaders





of the group to the issues which concern the membership. There is a related chance to recruit new members and new contributors for the group by a show of wisdom, information, or eloquence. For some there is the added satisfaction of a fight for the public interest. All this takes place before the eyes of an attentive corps of newspaper reporters who will give prominence to the events.

The more experienced among the nongovernmental representatives appearing before the Board know the odds against a substantial exercise of influence over the Board's immediate actions. They know that the Board's executive session has probably already arrived at a decision, and they understand how unlikely a reversal or modification is. But they know, too, that the opportunities for influence are not altogether absent. An unanticipated common front among the speakers, or the unexpected touching of a sensitive political nerve, may cause the Board to defer action, and action deferred is a new opportunity for influence. Then, too, the experienced representative may be using a present occasion to influence a future item (knowing the Board has sensitive ears for such nuances), or to provide the grounds for influence sooner or later in another place (before the Mayor, in an administrative agency, in the state legislature, in the courts, or in the press).

The Board's public forum is one of its own great assets as an institution and as a participant in the city's political contest. At minimal cost to its procedural system (especially to its private bargaining in its executive session caucus), the Board enlists on its side the affection and support of all the nongovernmental groups who need the stage the Board provides for the performance of their role and who cannot find its equivalent elsewhere in the city government (the Council, even if so disposed, lacks the power to make its public sessions equally significant). For many groups, this stage is deemed to be so essential to their functioning, and it is so difficult for them to imagine a substitute, that they do not examine the price they pay for their periodic appearances. They prize and support the Board as an institution, encourage the expansion of its powers, overlook the realities of the Board's caucus, counting their minutes on the Board's stage as measures of their influence. A few groups understand that the forum is symbolic; they look to other avenues of influence, using the Board's stage for more limited purposes. But so universal is the gratitude of the leaders of the nongovernmental groups to the Board for the use of the Board's public stage, that the Board as an institution is more nearly immune from criticism than is any other participant in the city's political contest.

## VARIATIONS UNDER FUSION

When all the members of the Board, or a majority of them, at a given time have been elected on a Fusion ticket (that is, a combination of Repub-

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licans and others in the joint endorsement of a list of negotiated nominations), the Board may undergo some important transformations in its behavior. The executive session caucus may decline somewhat in its importance, the Mayor may gain in leadership opportunities, the Comptroller may be inhibited in his independent role, and the Borough Presidents may have less stable ties to the party leaders. All these possibilities are related to the differences between a majority party (Democratic) city administration and a coalition administration.

First, the recruitment of the Fusion members of the Board is conducted under quite different circumstances and their relationships to each other are different. Fusion nominees for Borough President, Comptroller, President of the Council and Mayor are more likely to have had careers as insurgent, independent, or nonparty leaders. They are likely to have varied and divergent aspirations for their future careers. They are not likely to have known each other long or intimately. They are inclined to be program- or policy-oriented rather than party-oriented. And they tend to be individualistic, resistant to group unity or discipline, and relatively unpredictable in their responses to new issues. They are as likely to be openly competitive with each other as they are to be cohesive in action. The executive session caucus seems to some of them to be an unattractive institution.

Second, the Fusion Board members and the party leaders are not often comfortable collaborators. The Fusion Borough President, for example, must deal not only with the Republican County Leader but also with the leaders who organized his remaining electoral support (often not less than half of his total vote). For the Fusion Comptroller, President of the Council, or Mayor, this problem is multiplied by its ramifications in five counties. The result is that Fusion members of the Board usually maintain a detachment from party leaders not feasible for majority party members of the Board. The Board's caucus is thus often reduced in its effectiveness as a source of public unanimity for the Board, the Comptroller is deprived of some of his opportunities to form and lead a Board majority, and the Mayor may be able either to stand apart from the Board or lead it from within.

Third, Fusion Boards have revealed varying attitudes toward Mayors. In the Low administration (1902–1903) the Board was a new institution, its members just entering upon the search for the boundaries of the Board's power and influence, and so not prepared to test its opportunities fully. In the Gaynor administration (1910–1913) the Fusion Board confronted a majority party Mayor and demonstrated, under the leadership of Mitchel, then President of the Board of Aldermen, that the Board could often control an aggressive and self-willed chief executive. In the Mitchel administration (1914–1917) the Fusion Board and the Fusion Mayor were more compatible, but Mitchel frequently chafed under Board controls. In the three La Guardia





administrations (1934–1945) the Fusion Board majorities and the Fusion Mayor often clashed; the Mayor, by boycotting most of the executive sessions, by appealing to the public against the Board, and by occasionally directing his attacks at a Democratic or a Republican Borough President, managed to lead the Board more often than he was led by it—but in his third term his leadership over the Board was precarious.

All these variations, while having some important consequences for the Board, do not alter the essential characteristics of the Board as the institution at the center of the city's political contest. The Fusion Board is less united in its rivalry with the Mayor, the Mayor is less curbed by the Board, the party leaders have less direct access, but these differences are in degree rather than in kind. The Board survives Fusion administrations unimpaired in its primacy.

## DILEMMAS AND CONSEQUENCES

The Board of Estimate is a complex and subtle institution. It is powerful as a Board, wielding great influence over almost all city officials and employees, over most official decisions and actions. As such a center of power, it is an object of pressure and influence from all other participants in the political process, and it is more successfully influenced by some (by the Budget Bureau, its own bureaus, the organized bureaucracies, the party leaders) than by others. As an institution, it is itself a conscious participant in the city's political process, seeking to preserve and enhance its own power as against the rival institutions of the mayoralty and the separate administrative agencies.

But it is also a Board composed of individual members, each of whom is a participant in the city's political process as an individual official. The Board, as an institution, is primarily an instrument for each of them in the pursuit of his own separate goals. The actions of the Board are largely a product of the accommodations each can make with the others in pursuit of these separate goals. As an institution it is thus more an agency of accommodation than of leadership or unity. The consequences of its behavior are significant, but they are not a great contribution to coherence, integration, or innovation in the city's political process.

Four major consequences flow from the nature and strength of Board of Estimate participation in the city's political process. Taken together these four consequences make the Board the single most powerful participant in the distribution of the stakes of city politics.

First, the Board of Estimate has swallowed up the Council's functions. The charter-makers of 1936 described the Council as holding "the legislative power of the city" in one paragraph, but took the substance of that power away in later paragraphs which make the Board of Estimate preeminent.

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The result is that the city government has no genuine legislative process, for while the Board exercises many of the powers of a legislature, it does not function like one. A legislature in formal theory has several distinctive characteristics: it is composed of members of formally equal status and equal vote; its salient proceedings are public; it engages in structured public debate between its members, who are either sponsors or critics of proposed actions or current governmental performance; it has substantial powers which are exercised primarily through statutes of general application. With the swallowing up of the Council by the Board, New York City has no such legislative institution. It has, instead, a caucus of officials, acting *ex officio* as members of the Board of Estimate.

Second, the Board of Estimate has a commanding position within the city government over the city's financial and personnel policies and management. This role the Board has achieved by combining in practice its own formal charter powers with the extensive separate powers of the Comptroller, by using these combined powers to coopt the Budget Director and the Personnel Director into the Board's sphere of operations, and by dealing warily with the City Construction Coordinator (a semiautonomous center of power, of no great comfort to any other official participant). It is the Board of Estimate, not the Mayor, which manages the finances and the personnel of the city government. While the state constitution and state laws sharply limit the discretion of the city government in both finance and personnel, the Board is the master of such discretion as the city enjoys. The Mayor and his administrative agencies, and the service-demanding nongovernmental groups, may propose new programs or suggest modifications of existing ones; the Board centers its interest upon the minutiae of the city's finances and upon the ways in which proposed changes affect the fortunes of the city's bureaucracies. The preoccupation of the Board with finances recruits for the Board some cautious support from the revenue-providing interest groups, especially when the latter are alarmed by the Mayor's sympathetic responses to his service-demanding (and thus money-spending) constituencies. The Board also benefits by the gravitation of the city's organized bureaucracies toward the change-resisting Board and away from the innovating tendencies of the Mayor and some of his commissioners.

Third, the Board of Estimate is a major conservative force in the city's political contest. The Board, like the party leaders and the bureaucracies, has an affinity for the *status quo*. Its dominant characteristic is its capacity to absorb, as if it were a great sponge, the constant stream of proposals for change which flow in upon the Board from the Mayor, from the commissioners of departments and agencies, from the nongovernmental groups and the communication media, from all those who would like to be Mayor, and from all the other sources of dynamism in the city. The Board's powers and its procedural system are shaped to resist the unsettling effects of these proposals upon





the equilibrium of forces which the Board as an institution represents: the Board can refer, postpone, or bargain among the many proposals; while others talk about goals and programs, the Board (especially through the Comptroller and the Budget Director) can turn the vocabulary to one of scarce money or to disputed alternatives of jurisdiction for proposed programs. Proposers of change are thus transformed from pressures upon the Board to competitors with each other, while the Board pursues quietly its own inscrutable course, shielded by its caucus, its financial and personnel powers, its tradition of public unanimity, and the symbolic uses of its public forum.

Finally, the Board of Estimate seeks with substantial success to contain the Mayor, holding him to the rules of bargaining and to the commitments of the caucus in the Board's own executive sessions. This development is contrary to the hopes of the charter-makers at the turn of the century and of their successors in 1936. Their assumption was that the Board would be led by the votes of the "big three" (the Mayor, the Comptroller, and the President of the Council), that these three citywide officials would act together, and that the Mayor would lead them—thus blanketing the votes of the five Borough Presidents. This was wishful thinking in 1901, discounting as it did the nature of the city's party system, the relationships of County Leaders to Borough Presidents, and the evident tendencies of the Comptroller toward competition with the Mayor. In 1936, the theory had been so clearly refuted by a generation of Board history that the Charter Commission action can be explained only as a higher form of innocence or as a subtle vote of confidence in continued Board supremacy over the Mayor.

The reality is that the Board is not often led by the Mayor; instead, it unites against him if necessary, absorbs him into the Board as a member without special status if it can. Only twice in six decades can the Mayor be said to have called the tune for the Board: for a while under Mitchel, for a little longer under La Guardia—but for neither did the role of Board leadership span the Mayor's full tenure in office. The Mayor, even a Mitchel or a La Guardia, cannot lead the Board for long because he has no effective sanctions against the Board. He has no general veto over its actions; only La Guardia found it possible to stay away from the Board's caucus. Once he enters it he is not only shorn of his greatest strength (his capacity to invoke in broad public appeals the symbol and reality of his office as representing all the people of the city), but he is also committed to endure silently the agreements reached in the caucus whose rules of the game bind him as much as any other member. The Mayor ordinarily cannot even single out for special sanctions his rivals in the Board; these rivals are protected not only by the anonymity of the caucus and by the unanimity of the Board in public but also by the necessities of party unity emphasized by all the power of the County Leaders in the party.

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The Board of Estimate may be said to be composed of the Mayor and of seven other members who would have liked to be Mayor, or who hope soon to be Mayor, or who had preferences for Mayor other than the incumbent. These feelings are usually held most strongly by the Comptroller and the President of the Council. The Borough Presidents share them too, however, and have additional imperatives for regarding the Mayor as a rival. When to these sentiments, aspirations, and necessities are added the special powers of the Comptroller as chief financial officer, with their built-in rivalry to the Mayor, the most natural and logical (indeed the almost inescapable) majority alliance within the Board is not one among the "big three" but between the Comptroller and the five Borough Presidents. Their combined 14 votes are the core of the Board as an institution—the President of the Council may move back and forth across the line, pulled by the Mayor in one instance and by a County Leader in another (or even striking out on his own), and a Borough President may be lost now and then from the caucus majority; but the prevailing bargains are most often struck by the Comptroller and his five Borough President associates.

Of the three most important central institutions of the city government (the Council, the Board of Estimate, the mayoralty), it is the Board of Estimate which has most fully realized its own expectations as a participant in the city's political contest. The Council has disappointed even its least hopeful members. And the Mayor, as the city's elected chief executive and the most prominent participant in its political contest, would have been more fortunate if he could have exchanged his membership and his four votes on the Board for a separate existence as elected chief executive. As a member of the Board and a reluctant guest in its caucus he is less the elected chief executive of the city than the Board's hostage. On the chessboard of the city's politics, the Mayor may be king, but the Board of Estimate is queen.

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Most of the important business done by the city—budgets, franchises, important local laws, and so forth—are recorded in these pages.



**Exhibit (7): Annexed to the Appendix to Plaintiffs' Memorandum of Law Submitted to the United States District Court Eastern District of New York**

**New York City Charter Revision Commission for New York City,**

***Borough Government Report* (1973), pp. i-55**

STATE CHARTER REVISION COMMISSION
FOR NEW YORK CITY
270 Broadway
New York, N.Y. 10007

To: B. Bottger
E. Robin
S. Clifford
D. Seiden
J. Carberry
W. B. Richland
G. Hallett
S. Silverman

From: Dennis Allee 11 September 1973

BOROUGH GOVERNMENT REPORT

Attached for review and comment is the first draft of the Borough Government report. Written comments should be prepared for a meeting which will be held on Friday, September 21st, at a time yet to be designated.

DA/jmt
Attachment

*Exhibit 7 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

CHARTER REVISION COMMISSION
FOR THE CITY OF NEW YORK

# BOROUGH GOVERNMENT REPORT

NEW YORK STATE LEGISLATIVE INSTITUTE

THE BARUCH COLLEGE OF THE CITY
UNIVERSITY OF NEW YORK

September 1973



*Exhibit 7 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

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INTRODUCTION

The objectives of this study are as follows: *first,* to describe the present and historical role of borough government; *second,* to identify the main conceptual issues underlying possible changes in the present role of borough government; and *third,* to describe and analyze principal charter options for the future role of borough government.

The scope of this study is extremely broad. It covers virtually the entire range of Charter options available to the Commission. Thus it is essential to provide a borough focus which works towards achieving the objectives set forth above without duplicating studies in areas such as planning, budgeting and service delivery which the Commission has undertaken.

Any borough decentralization plan involves the transfer of specific powers over designated governmental functions from the city-wide to the borough level. Accordingly, the basic organizing principle for this study involves:

1. the identification of those functions that might be regarded as principal candidates for borough decentralization;
2. a description of the key powers required to control or substantially influence the exercise of these functions; and
3. illustrative models representing successively greater degrees of power transferred to borough government.

Specifically, the study is divided into two parts. Part I lays the foundation for consideration of specific decentralization models by presenting:



*Exhibit 7 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

Ch. I: descriptive information regarding the historical role of borough government, including a description of those functions once controlled by borough government;

Ch. II: the present role of the borough president;

Ch. III: a general discussion of how that role might be affected by the transfer of additional powers to the borough level; and the key conceptual issues such as size, race and politics that must be considered with respect to any borough decentralization plan.

Part I then continues with the presentation of a detailed set or options designed to "fill out" a borough government structure (Ch. I). That is, a structure that would encompass more than the office of Borough President. At present, the borough president is virtually synonymous with borough government, there being no meaningful powers vested in any other unit of borough government. Should the Commission decide to transfer significant powers to the borough level, these options might be considered in determining the appropriate locus of borough powers.

Part II begins (Chs. V and VI) by describing specific options for transferring successively greater degrees of power over the budgeting, planning and service delivery functions to the borough level. These chapters, therefore, describe various strengthened roles that the borough government might play in its relationship to city government.

A fourth role, not fitting neatly into any of the traditional, functional categories mentioned above, is that of borough ombudsman or citizens advocate as we have called

him (Ch. VII). Because it is an important role now played by the borough president, the Commission may decide to strengthen it independent of any decisions that are made with respect to the decentralization of other functions. This chapter similarly presents the potential relationships between citywide and borough government in terms of successively greater degrees of power that might be transferred to the citizens advocate.

Finally, Chapter VIII presents various options (again in terms of successively greater degrees of power that might be vested in borough government) for borough involvement in the event that the Commission determines to transfer meaningful powers to the district level.

The Appendix presents typical county government models, their structure and functional responsibilities as well as their relationship to the political subdivisions contained within them. These models may be useful in thinking about analagous borough government structures.

## CHAPTER I

### History of Charter Changes in the Office of Borough President

I. *Tracy Commission—(1897)*

The first charter for the consolidated City of New York, effective in 1897, divided the city into five boroughs, each comprised of a county or the cities, towns and villages that had been consolidated into New York City.

The borough of Manhattan was comprised of Manhattan, Governor's, Bedloe, Ellis, Oyster, Blackwell's, Randall's and Ward's Islands.



The borough of Brooklyn was made up of Kings County, that is the city of Brooklyn.

The Bronx was comprised substantially of all of old New York City north of the Harlem River, the city of Yonkers and the towns and villages from Westchester County which were annexed to New York City in 1895.

The borough of Richmond was comprised of Richmond County which consisted of the towns and villages on Staten Island.

The borough of Queens was comprised of Long Island City and the towns from Queens County which were incorporated into New York City pursuant to the affirmative vote of Queens residents on the consolidation referendum held in 1894.

Prior to consolidation, each county, city, town and village was governed under separate charters and local laws. Services in Brooklyn and in New York City were administered on a city-wide basis under central departments; except for the twenty-third and twenty-fourth wards in New York City where certain functions of the city's Department of Public Works were performed by a Commissioner of Street Improvements. In 1890, because the City had failed to map adequately and improve it, the residents of this area secured legislative authority to elect their own commissioner.

The 1897 charter established the Office of Borough President, but gave it few formal powers. Shortly after its enactment, borough political leaders pressured the state legislature and the governor to establish a charter commission for the purpose of examining the question of decentralization of power (primarily with respect to public works) to the borough level.

II. *Rives Commission—(1901)*

In April, 1900, Governor Roosevelt appointed the Rives Commission to examine the issue of borough-level decentralization. The Commission's findings and recommendations resulted in a substantially strengthened Office of Borough President.

Specifically, the Commission recommended that a Bureau of Buildings be established under each borough president, and that the borough president be given authority to appoint a Borough Superintendent of Buildings to enforce building regulations.

In the area of public works, both those paid for by local assessments and those paid for by the city, the Commission reported that it was "satisfied that the scheme of the present charter . . . proved most unsatisfactory in its workings, more especially with regard to the boroughs other than Manhattan." *

Testimony before the Commission indicated that the administration of services in matters relating to streets and sewers had proven more efficient under the old Commissioner of Street Improvements than under the centralized departments. Thus the Commission recommended that the Departments of Highways and Sewers be abolished and that their construction and maintenance functions be transferred to the borough presidents.

In accordance with the decision to decentralize public works, the new charter also abolished the city-wide Board of Public Improvements. Its local improvement functions were transferred to the twenty-five Local Improvement

* *New York City Charter Revision Report,* 1900, p. 14.





Boards and the Borough Presidents.* Various public works, formerly controlled by the Board of Public Improvements, were assigned to the borough president. He was authorized, under the charter, to appoint a Commissioner of Public Works for the borough.

The charter conferred substantial administrative powers upon the borough presidents. Table 1-1 presents the specific powers transferred to borough government, most of which the borough presidents retained until enactment of the present charter in 1963.

Approved on January 1, 1902, the new charter made the local improvement districts permanent, with changed boundaries. Each district contained a local improvement board comprised of the borough president and the members of the Board of Aldermen representing any part of the district. The borough president retained his chairmanship of each local improvement board. The boards had authority to hear complaints, pass resolutions regarding matters affecting the general welfare of the district and to recommend the initiation of local improvements.

Under the 1897 charter, the boards acted solely in an advisory capacity. Under the 1901 charter, while the boards retained advisory and complaint-hearing functions, they were also given substantial authority over local improvements. If a local board approved a petition from an affected property owner, the borough president was authorized to execute the contract for the work subject to the

* The 1901 charter defined the power of the Local Improvement Board to initiate "improvements in and about . . . streets within its district as the public wants and convenience of the district shall require." Ch. XI, Title 3, section 433 of the New York City Charter, 1901.

approval of the Board of Estimate and Apportionment.* If the cost of the work did not exceed two thousand dollars ($2,000.00), approval from the Board of Estimate and Apportionment was not required. If the improvements imposed upon the city as a whole involved a charge of more than five hundred thousand dollars ($500,000.00), Board of Estimate and Apportionment as well as Board of Aldermen approval was required.

In sum, prior to 1901, the borough president was viewed as a local figurehead, but under the proposed charter revision, he was given nearly all the authority that advocates of decentralized government had argued for in 1897, but

* The Board of Estimate and Apportionment existed in New York City prior to consolidation and was retained in both the 1897 and 1901 charters. In addition to having substantial legislative powers, the Board prepared the city's budget. Prior to 1901 the Board consisted of the Mayor, the Comptroller, the President of the Council, the Corporation Counsel, and the President of the Department of Taxes and Assessments. The 1901 charter gave the Board several new powers and radically changed its composition by adding Borough Presidents and removing all mayoral appointees. The President of the Board of Aldermen was substituted for the President of the Council, whose office (as well as the entire Council) was abolished. Finally, the total voting power of the borough presidents was made less than that of the officers elected on a city-wide basis to overcome the potential of block voting. The Borough Presidents of Manhattan and Brooklyn, the two most populous boroughs, were given two votes each. Each of the other borough presidents was given one vote, and the city-wide officers were given three votes each. In the Commission's judgment, the addition of the borough presidents to the Board of Estimate and Apportionment was appropriate in that the new charter gave the Board power to disapprove certain decisions of the Local Improvement Boards regarding local improvements, and to determine the amount of money to be expended for public works. The Commission feared, however, that the borough presidents together might control the Board's decisions, thus the weighed vote in favor of the city-wide officials.



had failed to obtain from the Tracy Commission, including substantial authority over the initiation of local improvements, control of public works in the borough, and mapping responsibilities.*

III. *An Interlude—(1901-1934)*

Between 1907 and 1934 several, unsuccessful attempts were made to revise the city charter for a third time. One source of dissatisfaction with the 1901 charter was the role played by the borough president. As indicated, his charter powers were extensive. He controlled a substantial number of governmental functions and executed all contracts for his borough. Frequently, he proposed a project, executed the contract, and supervised and inspected the work. He also hired subordinates and set performance standards. The virtual, total control over borough construction work from its inception to its completion made the borough president's office peculiarly susceptible to

* Under the 1897 (Tracy) charter, the Local Improvement Boards were authotrized only to recommend to the Board of Public Improvements that proceedings be initiated for local improvements. In the Tracy Commission's judgment, to furnish each borough with city funds to spend as the borough saw fit, would deprive the city of "unity of development, and would, in effect, destroy whatever advantage is to be expected from consolidation in the direction of skilled oversight and control." Mapping responsibilities were assigned to the chairman of the Board of Public Improvements, as the Commission deemed it undesirable to establish special machinery in each borough for mapping purposes. The Commission further thought that this function would be performed by a city-wide officer in cooperation with the Department of Sewers, the commissioner of which sat on the Board of Public Improvements.

** Charter Commissions and committees were established in 1907, '08, '09, '21, '33 and '34.

*Exhibit 7 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

charges of corrupt influences and abusive practices.* Whatever corruption existed in the office was related to influence exerted by the county political organization.** Many public officials and private citizens urged the abolition of the office of borough president and the transfer of service delivery authority to city-wide government.

In 1934 a charter commission headed by former Governor Alfred E. Smith was appointed to revise the city charter. Smith supported the idea of abolishing the Office of Borough President, contending that "the origin of borough government in this city had nothing to do with genuine local sentiment. . . . Its origin was purely political. It was a part of the price paid to powerful borough political leaders when the city charter was revised in 1901." ***

A bitter fight ensued and two months later Smith and the Commission's Vice-Chairman, Samuel Seabury, resigned.

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* The New York State Commission on Governmental Operations reported that "Such concentration of power has potential for abuse. Historically, the office of Borough President has been a breeding ground for scandal." *New York State Commission on Governmental Operations, Background Research on the Top Structure of The Government of New York, Vol. II, February,* 1961, p. 96.

** In his final report to the state legislature, Samuel Seabury, counsel to the legislative committee investigating the departments of government in New York City, reports that "In our municipal economy, the Borough Presidents' offices and the patronage they control are utilized primarily for the benefit of the local political spoilsmen who are supreme within their boroughs." *In the Matter of the Investigation of the Departments of the Government of the City of New York, etc., pursuant to Joint Resolutions adopted by the Legislature of the State of New York. Final Report to members of the Joint Legislative Committee,* Samuel Seabury, Counsel to the Committee, Dec. 27, 1932, p. 35. See also the hearings before the Governor on the removal of John F. Ahearn, Louis J. Haffin, and Lawrence Gresser; the Amen Investigations, 1938-'42; the Seabury Investigations, 1931-'32.

*** *New York State Commission on Governmental Operations, op. cit.,* p. 77.



*Exhibit 7 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

IV. *Thacher Commission—(1936)*

On January 12, 1935, Mayor Fiorello La Guardia appointed a new commission under the chairmanship of Thomas Thacher. The Thacher Commission recommended retention of the office, but gave the borough presidents no additional powers. Some powers, in fact, were transferred to the central administration. The Commission stated its position as follows:

> With respect to borough government, the Commission has adopted neither of the two extreme views which were vigorously pressed upon it, the one that the borough president should be abolished and all administration centralized and the other that the existing administrative powers of the borough presidents should be increased rather than curtailed. The Commission is satisfied that there exists in a large part of the city an overwhelming sentiment not only for borough representation on the Board of Estimate but that strictly local improvements, paid for by assessments on the homes of the people in the respective neighborhoods, be entrusted to local officers readily accessible and responsive to the people affected. The Commission believes that this desire for local self-government should be recognized where it is possible to do so without sacrifice of efficiency and economy. Accordingly, the Local Improvement Boards are continued and there is left in the hands of the borough presidents the construction and maintenance of local street and sewer improvements. On the other hand, intercepting sewers and sewage disposal plants, because of their relation to a city-wide service, are continued under centralized

control, and, because they involve principally an engineering project, are placed under the new Department of Public Works.*

Thus the boroughs maintained control over local street and sewer improvements while intercepting sewers and disposal plants were now to be controlled by a central administration, the Department of Public Works.

Jurisdiction over the construction, maintenance and repair of public buildings, previously under the control of the borough president, was assigned to the newly-created Department of Public Works and to other appropriate city-wide agencies.

With respect to the planning, construction and inspection of private buildings, a city-wide Department of Housing and Buildings was created and assigned jurisdiction to ensure uniformity of building regulations and enforcement policies.** However, a representative of the department was appointed to serve in each borough. He had authority over routine administrative matters, subject to review by the Board of Standards and Appeals. Consequently, while enforcement of building regulations was taken from the borough president, it remained an administrative function at the borough level. Further, the Department of Sanitation assumed the duties of the former Department of Street

* *Proposed Charter for the City of New York—Filed with the City Clerk—Aug. 17, 1936 and Report of the New York City Charter Revision Commission*, 1936, pp. 8 and 9.

** In 1933 a Board of Buildings was created comprised of five Borough Superintendents of Buildings. In the Commission's judgment, the need for centralization that had led to the consolidation of these departments could not be satisfied by a board whose members were responsible to five different superiors.





Cleaning. Under the revised charter, the new department was responsible as well for the sweeping and cleaning of paved streets and the removal of garbage in Queens and Richmond.

The Board of Estimate's composition and its weighted voting system remained as it had been under the 1901 charter for the Board of Estimate and Apportionment. The borough presidents successfully resisted an effort to remove them from the Board. Those who argued for their removal claimed that they often ignored the interests of the city as a whole when local improvements and other capital projects affecting their boroughs were under consideration.* Although the need for borough representation was upheld, the Thacher Commission did create a City

* The Thacher Commission reported that: "The growth and development of a modern city depends upon the wisdom and foresight with which capital improvements are undertaken and the extent to which the integrity of zoning regulations and of the city map is maintained. Unfortunately such expenditures too often have been undertaken because of local and special pressures and without relation to the interests of the city as a whole. Great waste has resulted and a species of log-rolling has developed in connection with measures affecting local or special interests. Such evils inevitably occur in representative government when several representatives of separate constituencies may join in supporting measures of local or special interest affecting their several constituencies or followings. But such evils are not to be cured by abolishing representative government, or by substituting one representative body for another. They should be controlled by publically confronting the representatives with the interests of the public at large." *Report of the New York City Charter Revision Commission, op. cit.*, p. 10. Further, "It is the conviciton of the Commission that such representation (by the Borough Presidents) is not only important in the interests of the boroughs, but in the interests of the city as a whole. Those who administer the manifold affairs of the city should be intimately familiar with the conditions and needs of the five boroughs." *Ibid.*, p. 19.

Planning Commission "to guide and to influence the city in its development and future growth."* The Thacher Commission's stated objective in creating the City Planning Commission was to ensure that capital expenditures would be authorized for those projects which were most important to the city's welfare.**

The City Planning Commission was given the power to prepare the capital budget to which the Board of Estimate could not add without approval from the Planning Commission, except upon a three-fourths vote. Further, all local assessable improvements costing more than ten thousand dollars ($10,000.00) as well as all public improvements, required City Planning Commission approval, or, in the alternative, a three-fourths vote of the Board of Estimate. The charter also provided for an advisory planning board in each borough, comprised of three members appointed by the borough president. These boards were to advise the borough president and the Planning Commission on all matters within the jurisdiction of the Planning Commission. The advisory boards, however functioned only sporadically.

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* *Ibid.*, p. 10.

** Following a discussion of the Planning Commission's proposed responsibilities, the Thacher Commission stated: "These functions of the City Planning Commission will assure the expenditure of capital resources for those projects which are most urgently needed for the improvement of the city, its future growth and development and its general welfare. They will prevent unnecessary and wasteful expenditure of capital resources upon the credit of the city, which has contributed in the past to the burden of the existing indebtedness of the city now requiring an annual appropriation for debt service of approximately one-third of the revenue raised by taxation." *Ibid.*, p. 25.



The charter was adopted at a referendum vote held on November 3, 1936.*

V. *Moore Commission—(1961)*

In 1959 the New York State Commission on Governmental Operations was created to study the government of New York City, and to propose recommendations for increased economy, efficiency, and effectiveness in government. During the first year of the Commission's existence it functioned under the chairmanship of Otto L. Nelson, Jr. When Nelson resigned, the Commission continued under the chairmanship of Frank C. Moore, former Lieutenant Governor and State Comptroller.

The Commission's findings emphasized the existence of excessive waste and duplication with respect to functions shared by or in control of borough government.

Insert for Page 17 of Borough President Report

*General Conclusions.* In its summary report entitled "A New Charter for the City of New York," made public January 16, 1961, the Moore Commission summarized its findings and recommendations in regard to Borough Presidents as follows:

VI. The Borough Presidents

New York City's borough organization is unique, bringing as it does representatives of the boroughs into the top structure of local government. As the

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* The legislative mandate which created the Thacher Commission called for a charter aimed towards more efficient and economical government. The Commission failed, however, to state and specific conclusions regarding the efficiency and economy of operations under the borough president's jurisdiction.

spokesman for his borough, each borough president has the opportunity to render an important service.

It has been noted that the Board of Estimate is over-burdened with administrative matters. In addition to his work on the Board, each borough president is responsible for carrying on extensive operational activities, including street paving and repair, sewer construction and maintenance, the removal of incumbrances, preparation of topographical maps, and the installation and maintenance of street signs.

Extensive staff studies of these operational activities indicated that decentralized control over these expensive functions would be wasteful and unsatisfactory even if all five borough offices operated at peak efficiency. Such wide variations in unit costs between the several boroughs and such deviations from unit costs in private contract work were evident as to render a finding of general efficiency less than possible. The City needs uniform policies, practices, and procedures and the development of city-wide standards. Decentralized field organizations are certainly necessary in such a large city, but there must be centralized control before any steps can be taken substantially to reduce the idleness of expensive equipment and manpower.

Transferring these operational activities to the Mayor's city-wide departments and limiting the functions of the Development Board [proposed successor to the Board of Estimate] will free the borough presidents to devote much of their time and energies to community leadership. The proposed charter provides new opportunities for such leadership.



***The operational responsibilities of the borough presidents will be transferred to city departments.***

Operations that involve streets, sewers and public structures will go to the Department of Public Works.

The topographical bureaus which handle the city map will go to the Department of City Planning.

The sweeping and cleaning of streets not having permanent pavements in Queens and Richmond will go to the Department of Sanitation.

Removal, storage, and disposal of incumbrances will go to the Department of Purchase.

Responsibility for issuing permits will go to appropriate departments such as the Department of Public Works and the Department of Licenses.

***The borough presidents will appoint community district boards.***

One of the problems of big-city government is developing citizen participation. In furtherance of this purpose the City Planning Commission will divide the City into a number of community planning districts, reflecting historical boundaries where significant and feasible, e.g.: Harlem, Flatbush, Jamaica, Fordham, and St. George. It will also encourage the gradual gathering of city services in these districts into local community centers.

As an integral feature of this program of community revitalization, each borough president will appoint community district planning boards having from five to nine members each. His central office will provide these boards with specialized staff services.

Councilmen whose districts lie in whole or part in a community planning district will be ex-officio members of the appropriate boards. This liaison with the Council should prove valuable as a means of developing local interest in community planning.

As problems often overlap district boundaries, each borough president may also establish borough-wide planning councils with representation from the community boards.

*The borough presidents will operate service and information centers.*

Citizen interest in city government is encouraged by a free flow of information. Borough offices will serve as information centers. The status of the borough presidents as members of the Development Board is such that their offices will be of great help in disseminating information to the public.

Each borough president will be authorized to hold public hearings on any matters affecting his borough.

VI. *Moore Commission Findings*

Isolating those factors which were found to contribute importantly to the waste and duplication found by the Moore Commission, we find: *first,* the system of local assessable improvements whereby local property owners were assessed for needed capital improvements led to distortions in the appropriate mix of capital improvement and maintenance expenditures. In large part, this was a consequence of the political risks to the borough president inherent in the system; *second,* that divided responsibility



for street construction, repair and maintenance resulted in considerable waste by failing to take advantage of the economies of scale that could be achieved with respect to certain of these functions; *third,* that the absence of central standards or guidelines for each borough resulted in seriously uneven performance; *fourth,* that the borough presidents generally were more responsive to the needs of individual citizens and less so with respect to system maintenance. This factor, aggravated by the general failure to maintain adequate programs for preventive maintenance, standard measurements of efficiency, and adequate records contributed to the overall inefficiencies found by the Commission; *fifth,* that fragmented responsibility for interrelated functions, especially with respect to sewerage services, led to serious inefficiencies; and, *sixth,* that the absurd fragmentation of responsibility regarding certain permit issuance and construction powers led to waste and confusion.

The findings with respect to specific functional areas are set forth below.

A. *Planning of Arterial Highways*

Pursuant to their duty to construct public roads and their membership on the Board of Estimate, the Borough Presidents planned arterial highways within the borough. They shared this function with a number of city-wide agencies, including the City Planning Commission, the City Construction Coordinator, and the Bureau of Engineering of the Board of Estimate. Moreover, the Tri-Borough Bridge and Tunnel Authority and the Port of New York Authority initiated studies on the need for arterial high-

ways in the city. As a result of overlapping planning responsibilities, these studies were often duplicative, and delays occurred while each agency reviewed plans submitted by other agencies.†

B. *Repair and Maintenance of Highways and Streets*

Expenditures for the repair and maintenance of streets and highways were expense budget items. The annual cost for five boroughs was approximately twelve million dollars, eight million of which was spent on laying surfacing material.* Almost the entire expenditure for laying surfacing material consisted of labor costs because the operation was largely patching of small holes for which manpower rather than machinery was used.

Consultants to the Moore Commission found an inefficient use of manpower. There were no observed differences in the jobs performed by laborers and those performed by high-paid asphalt workers.** Road repairs generally were not performed in bulk, but, rather, scheduled at the foreman's discretion.*** Crews of men were employed year-round, although a year-round operation of asphalt laying was not economically justified.**** Moreover, the system of patchwork repairs employed by the borough presidents was, in the long run, more costly than a meaningful capital improvement program would have been.

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† *New York State Commission on Governmental Operations, op. cit.*, pp. 79-85.

* *Ibid.*, p. 166.

** *Ibid.*, p. 177.

*** *Ibid.*, p. 182.

**** *Ibid.*, p. 188.





Patchwork was necessitated by two major factors: first, cuts made to reach utilities below the street surface, and, second, holes or breaks resulting from excessive use, weaknesses in the surface, aging of surface materials and a variety of other natural causes.

C. *Restoration of Pavement After Cuts*

Cuts in the surface made by private utility companies were generally restored by private paving companies. Contracts for the work were usually executed in bulk, and the restorations made promptly. The borough president's office restored cuts in the surface made by the Department of Water Supply, Gas and Electricity, and several smaller utility companies. The borough president's office also restored cuts made by plumbers in connection with repairs to plumbing facilities in private homes.

A Moore Commission study on the restoration of plumbers' cuts found wide differences among the boroughs regarding the speed with which restorations were made after a cut had been completed, and in the regulation and enforcement policies regarding the plumbers' responsibilities. The lack of written procedures, which was characteristic of the entire highway and street maintenance program under the borough presidents, also drew criticism from the Commission.*

All plumbers were required to backfill their cuts to prevent the restored area from settling. If the restored area settled, cracks developed in the surface, requiring additional repairs to be made. In Queens, a reinspection of

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* *Ibid.*

the restored area was made six months after restoration, and if it had settled the plumber was billed for repairs. In the Bronx, a reinspection was made upon complaint only; and, as in Richmond, the plumbers' liability was generally not enforced. In Brooklyn and Manhattan, the borough assumed responsibility for maintaining the cut after restoration.* The differences in procedures and the resulting cost disparities among the boroughs appeared to have little, if any, relationship to local physical conditions.

D. *Construction of New Streets*

The construction of a new permanent street was classified by the charter as a local assessable improvement, the cost of which was assessed against the benefited property owners. A local assessable improvement was initiated either by petition of the local property owners, or by the borough president upon approval of the Board of Estimate. Historically, the borough presidents were reluctant to initiate these improvements without a petition from the owner against whom the assessment would be made. Consequently, streets in bad repair that should have been replaced by new permanent streets were patched, repatched and sometimes entirely resurfaced as patch repaving paid for out of the expense budget.**

The need for new permanent streets was particularly evident in Queens, where, during its initial development, building permits had been issued without regard for proper

* *Ibid.*, p. 223.

** *Ibid.*, p. 185.



grading controls, drainage plans, or permanent sewers.* Homes were built both above and below the proposed street levels. Streets were not paved properly, as it was difficult to lower the street level when necessary because of a high-water table, or raise it when necessary because of water drainage into homes below the street level. Improper paving caused floods and street cave-ins that could have been avoided by the construction of properly drained and curbed permanent streets. The construction of such streets was hampered, however, by resistance to local assessments. Residents did not petition for the improvement, nor did the borough president initiate them.**

A similar problem of building under circumstances that would subsequently impede construction of properly drained and curbed streets had developed in Richmond.***

The Commission found that these problems were attributable to and could be averted by eliminating the system of local assessable improvements. The Commission also found that central planning and coordination and the elimination of divided responsibility for street construction, repair and maintenance were necessary to the development of new communities and the renewal of already developed areas.****

* From 1897 until the charter effective in 1902, building permits were issued by the City. From 1902 until the charter approved in 1938, the borough president, through the borough superintendent of buildings, issued building permits. After 1938, deputies of the city Department of Housing and Buildings were responsible for building permits issued in the boroughs.

** *New York State Commission on Governmental Operations, op. cit.*, pp. 86, 172-3, and 186.

*** *Ibid.*, p. 186.

**** *Ibid.*, p. 186.

E. *Asphalt Production and Transportation*

Roadway surfacing material was manufactured in five separate asphalt plants. Each plant produced only for the borough in which it was located. This system resulted in considerable waste, as the plants did not operate to capacity. Moreover, some of the plants were much older and less efficient than others* The system used for transporting asphalt was similarly inefficient. Trucks were purchased separately by each borough; often they were underutilized.**

In the absence of central standards or guidelines each borough determined its own truck needs and sizes. The size of the trucks influenced the size of the fleet and the manpower required for the program. These factors affected the cost for transporting asphalt. In Queens, for example, where small trucks and more manpower were employed, the labor cost for haulage was six dollars and thirty cents ($6.30) a ton, almost triple the cost required for Manhattan where larger trucks and less manpower were used.***

F. *Repair and Maintenance of Sewers*

Sewer maintenance was performed mainly in response to complaints. Little work was done on preventive maintenance and cleaning. In 1959-60, thirty-five thousand sewer complaints were received in the boroughs.**** Had the boroughs practiced an adequate program of cleaning and main-

* *Ibid.*, pp. 122-125 and 188.

** *Ibid.*, pp. 148-151.

*** *Ibid.*, pp. 150-151.

**** *Ibid.*, p. 195.





tenance, the number of complaints would have been substantially less.† An adequate preventive maintenance program, however, could not have been achieved under the borough system for the following reasons:

1. there were wide differences among the boroughs regarding procedures and techniques (not one borough had an adequate program for preventive maintenance according to the standards of the Water Pollution Control Federation);

2. no borough maintained standards against which its programs, operations and staffing could be measured; and

3. no borough maintained an adequate reporting and record-keeping system upon which standards could be based.*

Each borough had different staffing policies for sewer maintenance; the manpower employed was generally unrelated to the work load.** In some boroughs, the sewer maintenance program was overstaffed; in other boroughs it was understaffed. In Brooklyn, understaffing was due mainly to the borough president's policy of not filling vacancies as they occurred; a policy which caused serious problems, as Brooklyn had a number of sewer structures and devices which required regular cleaning to prevent "backup and clogging of sewers and diversion of sewage from the treatment plants to other outlets." ***

† The Commission estimated that complaints could have been reduced to approximately one-tenth of the calls per sewer-mile. *Ibid.*, p. 201.

* *Ibid.*, pp. 194-197.

** *Ibid.*, pp. 201-206.

*** *Ibid.*, p. 207.

The results of a questionnaire on sewer maintenance practices sent by the Water Pollution Control Federation to eighty-three cities showed that outside of New York City the average number of sewer-miles per employee for cleaning and repairs was 8.5. Had staffing in New York City been more efficient, approximately one hundred and five (105) fewer employees would have been required.*

The same study found that in four cities of over one million population the "average cost" for repair and maintenance per sewer-mile was five hundred and seventy-eight dollars ($578.00). This average was exceeded in each borough, except Brooklyn, and there, the lower-than-average cost was attributable to understaffing and other deficiencies in the maintenance program, such as failure to clean regularly various sewer structures.**

Fragmented responsibility for the city's sewer system was another factor contributing to the ineffective delivery of sewer services. Sewage disposal plants were designed, constructed, operated and maintained by the Department of Public Works pursuant to the 1938 charter. However, maintenance of internal sewer devices for non-intercepting sewers remained under the borough president's control. Divided responsibility made economical design and operation of the treatment plants difficult to achieve because efficient plant operation often depended upon proper functioning of the internal sewer devices. The Moore Commission recommended that control of the city's sewer system

* *Ibid.*, p. 206.

** *Ibid.*, p. 211.





be placed in the same department that controlled sewage treatment and pollution devices.*

G. *Construction of Sewers*

A number of areas outside of Manhattan required construction of public sewers. Here again these improvements were often delayed and sometimes prevented altogether by resistance to local assessments. The borough president rarely initiated these improvements without a local petition. When left to the initiative of local property owners, petitions were not brought; when petitions were brought, sewer construction was often blocked by petitions from affected property owners.**

The difficulties and delays inherent in the procedures for constructing public sewers led, in many instances, to construction of private sewers. These sewers were difficult to incorporate into the public sewer system. Moreover, each borough maintained its own policy regarding service to privately owned sewers. Some boroughs provided no service at all, while others provided partial service.***

The failure to service private sewers on the same basis as public sewers posed an obvious health problem. Should a health hazard occur as a result of the improper functioning of a private sewer, the only governmental recourse was to the Department of Health for inspection and issuance of a summons, which was not always effective as ownership of private sewers was often difficult to trace.

* *Ibid.*, pp. 88, 252-254.

** *Ibid.*, pp. 242-252.

*** *Ibid.*, pp. 207-208.

H. *Authority to Issue Permits*

The borough president had authority to issue permits to use or open streets, but additional permits and licenses were required from city agencies depending upon the purpose for which the street was used or opened. Examples of waste and duplication cited by the Moore Commission included the following situation: approval for a street fair was obtained from the Police Department; if the organizers of the fair erected a bandstand in the street, the borough president's approval was required; if the bandstand erected on the sidewalk, the Department of Buildings issued the permit. The location for a newstand was approved by the borough president, but the operating license was issued by the Department of Licenses. A street opening to install a conduit required the borough president's approval, but the conduit itself was approved by the Department of Water Supply. Needless to say, divided responsibilities and powers over the same and related functions created confusion and inefficiency.*

I. *Construction and Maintenance of Bridges and Tunnels*

The borough president's authority over construction and maintenance of bridges and tunnels extended only to those that formed a portion of the highways. Jurisdiction over bridges and tunnels that crossed navigable streams remained with the Department of Public Works. Bifurcated responsibility led to an absurd division of labor. If, for example, a bridge or a tunnel formed a portion of a highway, but extended across a navigable stream, the borough

* *Ibid.*, pp. 95-96.





president maintained the highway on both sides of the stream but not on the bridge across the stream.*

J. *Placing Street Signs*

The borough president placed all street signs in the borough. Arterial highways often spanned more than one borough and, consequently, a need was expressed for standardized signs.** Even this relatively simple task became the subject of controversy and confusion.

The Moore Commission was not authorized to draft a charter and submit it to a referendum vote for approval. In 1961 a general law was passed by the legislature enabling the Mayor of any city to appoint a charter commission having authority to submit its proposals to a referendum vote. Pursuant to this law Mayor Wagner appointed a Commission to revise the city's charter. The Commission headed by the Honorable John T. Cahill was mandated to provide a more "efficient, economical and effective" city government.

VII. *The Cahill Commission—(1963)*

Relying in large part upon the Moore Commission's findings, the Cahill Commission recommended reduced powers for the borough presidents, and the new charter became law on January 1, 1963. Its impact on the office of borough president is set forth below:

1. with the exception of the Topographical Bureau, the borough president was no longer responsible for streets

* *Ibid.*, pp. 96-97.

** *Ibid.*, p. 97.

and highways, lots and vaults, sewers, incumbrances or street signs;*

2. special assessments for local improvements were abolished. Local assessable improvements were redefined as capital projects to be included in the capital budget.** Property owners maintained the right to petition the Board of Estimate for a local improvement in instances where the petitioners were willing to pay the cost of the improvement;***

3. jurisdiction over streets and highways became the responsibility of the Department of Highways, along with authority over the filling of sunken lots, fencing of vacant lots, digging down of lots and licensing vaults under the sidewalks;

4. jurisdiction over construction and maintenance of all sewers and sewage disposal plants became the responsibility of the Department of Public Works. The Department of Public Works also assumed jurisdiction for all bridges and tunnels and over the construction and maintenance of public baths and comfort stations not under the jurisdiction of the Department of Parks;

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* Ch. 4, sect. 82 of the New York City Charter effective January 1, 1963 maintains the Topographical Bureau under the borough presidents; but general jurisdiction over matters related to streets and sewers became the responsibility of central departments.

** Ch. 9, sect. 211 of the New York City Charter effective January 1, 1963 defines "capital project" to include projects that the 1938 Charter defined as "assessable improvements."

*** Ch. 9, sect. 229 of the New York City Charter.



5. the removal of incumbrances became the responsibility of the Department of Sanitation;

6. the control, design and placing of signs indicating streets and public places became the responsibility of the Department of Traffic.

VII. *Present Borough President Charter Powers*

When compared to the functions performed by the borough president prior to the 1963 charter, his current duties appear insubstantial. The formal remaining charter powers are as follows:

1. The Board of Estimate: The borough president is a member of the Board of Estimate.* As such, he votes on the city's capital and expense budgets, franchises, city leases, zoning resolutions, use of city property, housing projects, private subdivisions, city map changes, and on other matters of substantial city and borough-wide importance.**

2. The Topographical Bureau: Each borough president maintains a Topographical Bureau. The Bureau's main functions are the compilation of sub-surface data; the preparation of maps, plans, profiles, and grade data covering sewers and highways in the borough; and the issuance of house numbers.*** With the exception of the Topo-

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* *Ibid.*, ch. 3, sect. 61.

** See generally the New York City Charter effective January 1963 for powers of the Board of Estimate.

*** Letter from Charles H. Tenney, City Administrator to the Honorable Robert F. Wagner, Mayor, December 12, 1962, in which the proposed organization of the Office of Borough President under the 1963 charter is explained.

graphical Bureau, the borough presidents no longer maintain jurisdiction over any matter related to streets and sewers.

3. Site Selection: The borough president serves on the Site Selection Board with the Director of the Budget, the Administrator of Municipal Services, the Comptroller and the Director who heads the City Planning Department and is chairman of the City Planning Commission. The borough president votes only on capital projects located wholly within his own borough.*

4. Capital Projects: The borough president may recommend capital projects. He may make recommendations to the appropriate department chief; to the City Planning Commission; to the Mayor, and finally, he may make recommendations to the Board of Estimate, which votes on the budget.**

5. Appointments to The Community Boards: Each community planning district in the borough has a Community Board to advise the borough president, the City Planning Commission, the Borough Improvement Board and other public agencies on matters related to the district's "welfare and orderly development." Each Community Board is comprised of the councilmen-at-large, the councilmen from any area which includes part or all of the community district, and not more than fifty (50) people appointed by the borough president in consulation with the councilmen and

* Ch. 9, sec. 227 of the New York City Charter, effective January 1, 1963.

** General authority to recommend capital projects is contained in Ch. 4, sect. 82 of the New York Charter.





councilmen-at-large. The borough president must call a meeting at least once a year with the chairmen of the community boards and the members of the City Planning Commission. Other city officers may attend at the invitation of the borough president. Also, the borough president must attend a similar meeting called by the Mayor at least once a year to discuss with the chairmen of the community boards the city master plan and other planning matters affecting the city as a whole or more than one borough.*

The borough president is the official custodian for the minutes and all the records of the boards.**

6. Chairman of The Borough Improvement Board:*** Borough Improvement Board is comprised of the councilmen elected from the borough and the borough president, who is Chairman of the Board. The charter mandates that the Board hold public hearings at stated intervals, and report to the Board of Estimate, the Council, the Mayor and the City Planning Commission on borough programs and proposed capital projects. The Board is empowered to employ technical and clerical assistants. The Borough Improvement Boards, like the Community Boards, are advisory bodies, without power to implement their recommendations.

* Ch. 9, sect. 84 of the New York City Charter, effective January 1, 1963, as amended.

** *Ibid.*

*** A separate report on the history and present functions of the Borough Improvement Board is being prepared for the Commission.

**** Ch. 4, sect. 85 of the New York City Charter, effective January 1, 1963.

*Exhibit 7 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

7. Staff: The Borough President may appoint and remove a Deputy and an Executive Assistant. He may also appoint a secretary and assistants, clerks and subordinates as he deems necessary and for which there are appropriations. While these latter appointments are at the borough president's pleasure, they are subject to the civil service law.*

8. Spokesman and Community Advocate: The borough president is authorized to hold public hearings on matters of public interest, and to make recommendations to the Mayor and to other city officials in the interests of his borough.** In the performance of these duties citizens come to him with complaints about city services or requests for information. The borough president in the past had power both to receive complaints and to act upon them by virtue of his jurisdiction over a wide range of matters. The present charter gives little power to act upon complaints, except that the borough president may and does refer the complaints to the appropriate agency.

The exercise of power and the informal sources of borough president influence are discussed in the following chapter.

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* *Ibid.*
** *Ibid.*



*Exhibit 7 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

*Table I-1*

*Powers Transferred to Borough Government by the Rives Commission (1906)*

1. power to appoint and remove at pleasure a Commissioner of Public Works for the borough. The Commissioner discharged all administrative power relating to streets, sewers, public buildings and supplies conferred upon the borough president;

2. power to appoint a secretary, assistants, clerks, and subordinates and remove them at pleasure subject to provisions of the civil service laws;

3. jurisdiction over the regulating, grading, curbing, flagging and guttering of streets and laying of crosswalks;

4. jurisdiction over the paving, repaving, resurfacing and repairing of all streets;

5. jurisdiction over the construction and repair of public roads;

6. jurisdiction over the relaying of surface railroad tracks in any public street or road;

7. jurisdiction over the filling of sunken lots, fencing of vacant lots and of licensing vaults under sidewalks;

8. jurisdiction over the removal of incumbrances;

9. jurisdiction over the issuance of permits to builders and others to use or open the streets;

10. jurisdiction over construction and maintenance of bridges and tunnels within the borough and which form a part of its highways, except bridges over navigable streams;

11. jurisdiction over all subjects relating to public sewers and drainage;

12. jurisdiction over the construction and maintenance of public buildings;

13. jurisdiction over public baths and comfort stations, and the placing of street signs;

14. power to prepare all contracts relating to the borough subject to approval as to form by the Corporation Counsel;

In addition, Queens and Richmond, the borough president supervised the sweeping and cleaning of streets and the removal of garbage. In the other boroughs these functions were performed by a central Department of Street Cleaning.



## CHAPTER II

### The Present Role of the Borough President in New York City Government

In order to define the borough president's present role in New York City government, this chapter presents: *first,* the organizational structure of the office; *second,* the borough president's intraborough role; and *third,* his general role in relationship to city-wide agencies responsible for borough service delivery and planning functions. The organizational structure of the Office of Borough President is presented in Diagram 2-1.

### I. *The Borough President's Intraborough Role*

#### A. *Citizen—Political Contacts*

The Borough President maintains regular contact with, and is easily accessible to, private, voluntary organizations within the borough. He holds frequent meetings with local homeowner associations, builders and developers, as well as community and special interest groups which for one reason or another are affected by, and seek access to, municipal government.

His power to appoint community planning board members as well as the staff support that he offers such boards provides him with a steady flow of information regarding the problems and views of the discrete communities that comprise the borough. The Borough President's close ties to the boards are at present a moderate source of influence and power which, as the boards mature and obtain addi-

tional resources, promises to develop into a more important factor in the planning of borough capital projects.*

In most boroughs, the Borough President has some contact with councilmen either in the structured atmosphere of Borough Improvement Board meetings where he presides as chairman and determines the agenda, or in the less formal contacts required of public officials who share constituencies or party affiliation. These contacts are an additional source of influence and community information.**

Historically, the Borough President has been closely linked to the regular county political organization. In recent years, several borough presidents have been supported by reform organizations as well.*** Generally, the county leader in consultation with other political leaders would choose the party's candidate for Borough President. The office, therefore, became an important source of patronage for the county organization. When the Borough President had the responsibility for and the control of public works, for example, he would appoint corporation inspectors on the recommendation of the county leader to whom he owed his nomination. District leaders might serve as commissioners

* It should be noted, however, that recent experiments initiated by the City Planning Commission which are designed to increase Community Board powers could conceivably result in closer ties between the boards and central government institutions at the expense of the borough presidents.

** The Borough Improvement Boards have little power. They have been appropriated some planning funds, however, and substantial control over the expenditure of these monies may be considered a marginal source of power for the borough president.

*** The use of the terms "reform" and "regular" are not meant to imply either superior political virtue in the former or the absence of progressive leadership in the latter. They are simply descriptive of distinct political organizations within the city.



or deputies of the line agencies. Contractors or developers in the Borough might influence the Borough President's letting of contracts or his voting in the Board of Estimate by reason of their influence with the county leader. Parenthetically, we should emphasize that these relationships are set forth to establish the Borough President's ties to the county organization. We have no evidence that patronage is less likely to be a problem at the central or district levels, or in fact, that certain forms of patronage are not desirable.

It is not within the scope of this report to document the nature and extent of the present power of the county political leadership in each of the boroughs. But it is important to point out that despite the general decline in influence of the county leader in the recent past, city-wide officials and those who like to become city-wide officials often look to him for support in primary and general elections. Moreover, the county leader continues to exercise substantial influence at the state level, especially in the selection of legislative leaders. Thus, in those boroughs where the Borough President is closely tied to the county political organization, he derives from it an additional and sometimes potent source of influence with respect to the administration's policies as they affect his borough. In addition, the backing of organized reform or regular political organizations with strong grass-root ties in certain areas has contributed to the power and influence of the borough president.*

* It should be noted in this regard that mayors also have attempted to duplicate this kind of political support when it was not readily available to them from existing political organizations, as witnessed, for example, by the John V. Lindsay clubs.

B. *Memberships*

The Borough President's position on the Board of Estimate is a major source of his influnce and statute. Few community issues of consequence or projects of any scope escape the Borough President's attention and generally they reach him at the earlier stages of their development. A builder, for example, who needs an approval for his project from the Board of Estimate, a variance from the Board of Standards and Appeals or the support of a community planning board often will seek the Borough President's views before he submits his plans to an official body. Local merchants may seek his commitment to vote in the Board of Estimate against the approval of a bus franchise that would enable shoppers to travel easily to a more distant shopping center, thus adversely affecting the merchants' sales. The Borough President's membership on the Site Selection Board (discussed infra), together with his Board of Estimate membership, gives him a reasonably strong role in influencing capital developmnt within the borough. With the technical resources available to him through his engineering staff and topographical bureau, he is well informed as to the issues and well situated to have some, but by no means a controlling influence over borough development.

C. *Various Roles Played by the Borough President*

Elected by a borough-wide constituency, he is generally perceived as an advocate for borough interests. A line administrator having formal decision-making power over an interest ordinarily will pay attention to his views, if only because often he is the most knowledgeable public





official with respect to the competing influences and forces in the affected community.

Frequently, the Borough President will be cast in, or assume the role of, a broker between a city administrator and the community or special interest group with a stake in the administrative decision. A community threatened with a reduction in the manpower assigned to its local police precinct, for example, may appeal first to the Borough President for intervention at a higher level of city government than that which is accessible to the community itself. He may arrange a meeting or series of meetings to which he will invite high-level city officials and community representatives. Few city officials will ignore such an invitation. Notwithstanding his lack of formal charter powers, the Borough President is an important political figure and a public official with a large constituency. Not only does he influence community opinion, but he has access to other city officials and political leaders who may be important to the success of the agency's programs or to the administrator's political career.

While his own views may not always prevail, as a broker-advocate for borough interests he can and does afford private citizens within his borough direct access to decision-makers at the highest levels of the city administration. Moreover, because he is a public official with significant political standing, such meetings are carried out in an atmosphere that suggests a rough equality of position rather than the supplicant-bureaucrat relationship that characterizes much of the private citizen—public official contact in New York City.

In advancing the interests of his community, however, the Borough President must be sensitive to his own need

for a continuing and friendly relationship with central city officials. His influence over governmental decisions that are important to him, as well as his ability to secure the scores of small favors that he requires to service his constituents, depends in part on the good will of the administrators who manage or head the major city departments. In a real sense, therefore, he must be a broker as well as an advocate.

Tradition, existing power relations, the extent to which he is able to mobilize community support over a specific issue, all play a part in determining whether the Borough President will be successful in dealing with city-wide officials. But the stance that he assumes and the likelihood of his success depends also on the nature of the issue. With respect to some issues, he has little real influence.

## II. *The Borough President's General Role with Respect to Borough Service Delivery and Capital Development*

### A. *The Borough President's Influence Over Service Delivery In the Borough*

#### 1. *Routine Service Delivery*

The line agencies must come before the Board of Estimate for expense budget approval. It would appear, therefore, that the Borough President is in a good position to recover, if not the inter-borough allocation of resources, at least the intra-borough mix of services and program priorities reflected in agency expense budgets. In fact, he has relatively little impact on the expense budget.

*First,* he has little information as to the underlying rationale for the allocation of resources among the different boroughs or programs. Together with the Bureau of Bud-



get, the agency will have prepared its programs months in advance of submission to the Board of Estimate. Constrained by the lack of staff resources capable of critically evaluating the agencies' programs, and lacking the technical data upon which they are based, the Borough President can do little more than interrogate the agency heads and for the most part accept their responses. He may, from time to time, point out the inadequacy of service in a community or ask an embarrassing question at the budget hearing, but this is a far cry from exercising any real impact on the agencies' priorities.

*Second,* the Borough President has little influence with respect to budget modifications throughout the year. The shifting of resources within an agency is carried out by the agency and the bureau of the budget. Obviously, this power is crucial to the exercise of substantial influence over service functions. Without some formal capacity to influence budget modifications it is extremely difficult for the Borough President to exercise any real influence over services within his borough.

*Third,* the community support and media coverage that the Borough President often can generate around a controversial capital project is more difficult to sustain in the case of service delivery problems which are endemic to the entire city.

*Fourth,* the agency itself has limited control over its own priorities. Hedged in by budget constraints, union and civil service rules, the need to continue established programs, and the Mayor's own priorities, the line agency has relatively little discretion to modify substantially its own programs.

Accordingly, the Borough President has little to say about the ongoing service delivery operations within the borough.

2. *Specific Complaints*

Although he is unable to alter substantially the mix of services delivered to his borough, the Borough President does have some impact on specific service complaints brought to him by his constituents. Where, for example, his office receives what appears to be a serious instance of service breakdown, he will ask the relevant agency personnel (generally he or his deputy develops several personal contacts within the central agency or its borough command) to give the problem a higher priority than it would ordinarily receive. The agencies, especially water resources and sanitation, which comprise a large percentage of service delivery complaints at the borough level, are besieged with similar requests each day from district leaders to congressmen, and so there seems to be a tacit understanding of the permissible limits of the Borough President's influence over day-to-day maintenance and repair programs; he uses his influence sparingly.

It appears that approximately 90% of the requests for consideration received in the Borough President's offices are systematically forwarded to the appropriate city-wide agency. Typically, a letter from the Borough President is forwarded to the appropriate bureau chief. In the letter the Borough President requests service of the complaint. A carbon copy is mailed to the constituent-complainant. Generally, the routine procedure is understood by both the Borough President and the line agency not as an urgent appeal for help, but rather as the formal exercise of a governmental responsibility and perhaps political necessity.





With respect to more important complaints which seem to merit special attention, a telephone call to the appropriate agency official generally will secure satisfaction. It should be pointed out, however, that even where the complaint is treated routinely, the complainant is at least directed to the correct agency and level within the agency, a not insubstantial contribution to the emotional well-being of a complainant who might otherwise bounce from civil servant to civil servant in an effort to secure satisfaction of his complaint. (See discussion infra, p. 64.)

B. *The Borough President's Influence Over Capital Projects*

The Borough President's capital development inputs are greater than those having to do with service delivery.

The major avenues for direct, formal involvement by the Borough Presidents in the planning process are the Site Selection Board and the Board of Estimate.

The Board of Estimate affords Borough Presidents the opportunity to veto or delay projects which they (or their constituents) do not want. The practice of borough courtesy, usually, but not always followed, gives a Borough President in effect ten out of the twenty-two votes on the Board. The leverage thus obtained can be a crucial bargaining point in the negotiations which surround consideration of the Board's extensive agenda.

Opportunities for negotiation are also found when the Board is acting on the capitl budget. Here a Borough President has more than delay or veto powers. He can and often does insist that capital projects which he favors but which have not been included in the Mayor's executive capital budget are included as a precondition for approval

of the entire capital budget. As the commission already knows, however, the inclusion of a project in the capital budget does not mean that it will be built.

Typically, the Borough President determines the borough's priorities, evaluates the Mayor's budget to determine whether it reflects those priorities and then meets in an executive session which excludes the Mayor. In the executive session, the Comptroller provides the Borough Presidents with the requisite fiscal information, enabling them to amend in recent years anywhere from 100 to 150 million dollars worth of capital projects. The Borough President's staff resources, especially his engineering staff and topographical bureau, provide him with the technical expertise required to compete with the administration, and the fact that the projects are brought before the Board each year enables him easily to keep track of their progress. Moreover, because the Board is the final authority in zoning and other land use matters, the Borough President has additional leverage in affecting the administration's capital planning decisions. Our impression is that the administration generally has its way on the Board, but that it must pay a price to borough interests, often in accepting capital projects favored by the Borough President.

The Borough President's membership on the Site Selection Board is another point of access to capital project decision-making. However, the Board is dominated by city officials who are concerned primarily with site-selection criteria that emphasize the dollar costs of comparable sites. For example, the Board ordinarily will try to select a site owned by the city and thus avoid condemnation costs. As a second preference, the Board will look to an unimproved and unoccupied site so as to avoid demolition costs as well



as the social and fiscal problems associated with relocation. Such factors as topography, proximity to transportation, soil conditions, availability of water and sewerage all weigh heavily in the siting decisions arrived at by the city members who meet prior to the Board's formal meeting to coordinate their positions.

The Borough President, however, tends to be more concerned with community preferences where they are ascertainable. If, for example, an otherwise suitable location for a sanitation garage meets with local opposition, the Borough President's need to be responsive to his constituency generally outweighs his role as a city-wide official responsible, in theory at least, for the city's overall fiscal condition. As some major controversies have demonstrated, however, community opinion may not crystallize until after the site selection process. Thus the Borough President may not be wedded to particular positions, while the city-wide representatives usually are committed.

This is not to suggest that in all capital projects the Borough President's sole concern is with community sentiment. It is not. Nor is it to suggest that the city-wide members ignore community preferences. They do not. Obviously, these are more subtle questions of emphasis and direction rather than hard and fast political rules.

In the context of capital planning, the Borough President's access to the media is relatively important whereas with respect to service-delivery problems, it appears to be less so.

A community opposed to the location of a narcotics treatment center, for example, may enlist the support of the Borough President because his access to the media is much greater than that of the local councilman. The Borough

Presidents are, of course, sensitive to this potential, as is the Mayor. No doubt even the unexpressed threat that a Borough President may "go public" on a given issue carries weight with the administration.

Informal proceedings involving bargaining between the Borough Presidents and other city officials expand the influence of the boroughs, but not to the point where borough residents have a substantial voice in what is being planned for their communities. The formal determination whether to actually construct a project rests with the Bureau of the Budget. The initial planning is carried out at the City level.

The Borough President does have some access to the city agencies involved in the planning process. But his overall impact on the planning process is relatively small.

The principal agency for planning is the City Planning Commission and its staff and service arm, the Department of City Planning. The Commission and the Department have a City orientation and to a considerable degree they are mayorally dominated. Borough input is limited and informal. All of the Commission members are appointed by the Mayor. There is no Charter requirement for borough representation. In fact the Commission's membership suggests a distinct Manhattan orientation. At present, of the seven members (including the chairman), four are from Manhattan, two from Brooklyn, and one from Queens. Thus two boroughs are not at all represented.

In recent years, however, the Commission itself has established some degree of borough decentralization. Borough offices have been established. The borough offices review all proposals relating to planning within the borough, including zoning, mapping, and capital budget projects. In



addition, the borough offices besides serving as the actual physical location for meetings with community leaders, increasingly serve as a liaison between neighborhoods and the Commission. While those who staff the offices do not have the authority to approve or disapprove projects, their recommendations carry considerable weight with the Commission. Too, there has been an increasing borough focus on capital planning.

As previously noted, the community planning boards add some, but not very much, to the boroughs' role in the planning process. They are, of course, district and not borough-wide bodies. Although acceptance of the legitimacy and the value of the more than five dozen community planning boards has risen, these boards as yet receive inadequate funds and their role remains advisory. The Charter provides that the boards advise the Borough Presidents and the City Planning Commission, but in fact the boards are most closely related to the Borough President.

One of the major weaknesses of the borough's role in influencing the city's capital planning process is the Bureau of the Budget's strength in that process and the lack of influence which the Borough President has over the bureau.

While not essentially a planning agency and though its functions are barely alluded to in the Charter, the Bureau of the Budget is a highly active participant in the planning, approval and execution of capital projects. Few things are accomplished without Bureau approval and virtually nothing without its involvement. As an arm of the Mayor's office, the Bureau of the Budget is even less related to and subject to the influence of borough processes and pressures than is the City Planning Commission.

To be sure, this situation is not entirely disadvantageous to the Borough Presidents. As discussed elsewhere in this

report, removal from authority over planning brings with it removal from acceptance of responsibility for what others do or want done. Indeed, the political position, if not the governmental one, of the Borough Presidents is protected by virtue of the limited role that they play in the city planning picture. When the capital budget is up for adoption, for example, Borough Presidents are able to secure inclusion of items, although there may be a covert agreement that at least during the fiscal year covered by that capital budget there will be no progess on these items. On other occasions, Board of Estimate members may privately agree to approve an agenda item formally opposed by the Borough President in whose borough the project is to be located. Thus the Board of Estimate, it must be emphasized, is often a convenience to Borough Presidents, for its processes and practices permit them their role as borough advocate. But there are costs to this system and they are ultimately chargeable against the role of the boroughs in the city-wide planning processes.

In sum, therefore, the formal and informal processes of the Board of Estimate, Site Selection Board and other sources of planning influence, as important as they are, leave the Borough Presidents and the boroughs as secondary figures in New York City planning; they are reactors to the plans and proposals of others rather than innovators. If borough decentralization is contemplated, existing arrangements are insufficient to insure borough residents a long-range, consultative, and meaningful role in the capital projects planned for their borough.

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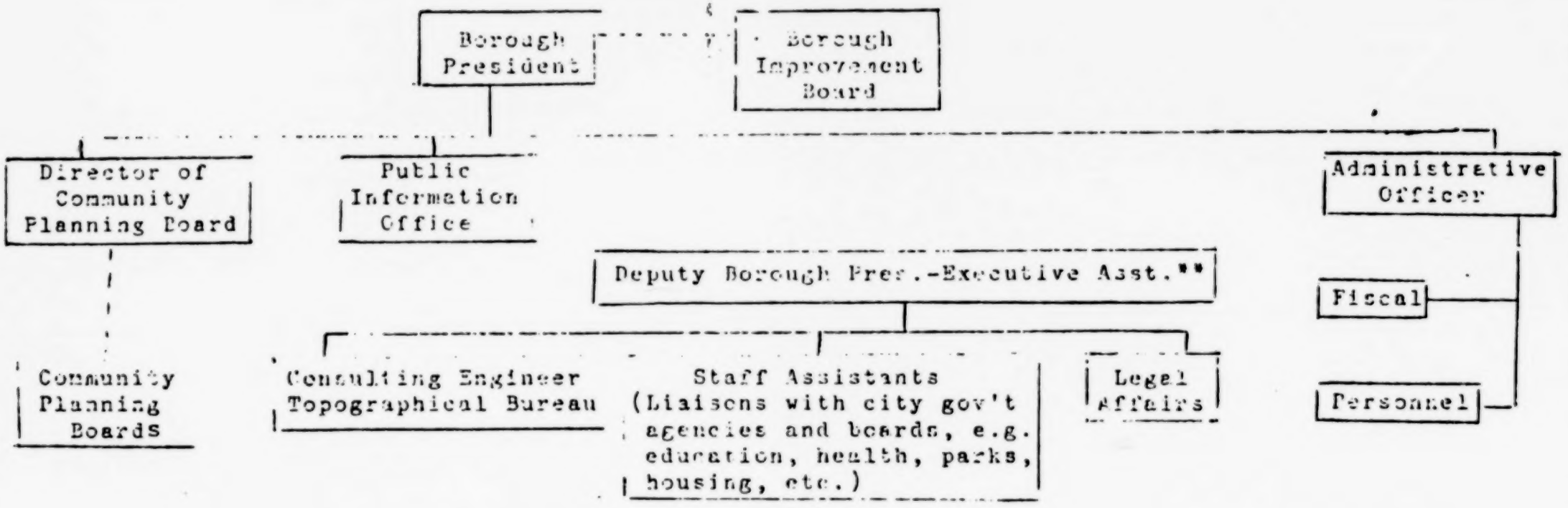
*Exhibit 7 Annexed to the Appendix to Plaintiffs' Memorandum of Law*

DIAGRAM 2-1

ORGANIZATIONAL CHART OF THE OFFICE

OF BOROUGH PRESIDENT*




Principal Boards of City Government on which the Borough President is a Member:

Board of Estimate

Site Selection Board

_____Direct reporting responsibility

-----Partial reporting responsibility

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* Each office of Borough President is organized in a slightly different manner. This organizational chart is intended to be representative of the basic organizational structure of this offi

** The responsibilities between Deputy Borough President and Executive Assistant [illegible]

**Statement of Frank V. Ponterio of Genuine Issues of Facts Pursuant to Local Rule 9(g), dated February 1, 1984**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

81-CV-3920 (E.R.N.)

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MORRIS et al.,

*Plaintiffs,*

—against—

THE BOARD OF ESTIMATE et al.,

*Defendants,*

FRANK V. PONTERIO, et ano.,

*Intervenor-Defendants.*

---

The following is a statement of facts alleged by plaintiffs to be undisputed to which intervenor-defendant objects on the ground that genuine issues exist as to such alleged facts as particularly set forth in intervenor-defendant's affidavit and memorandum of law:

1. Whether, cumulating representation by the borough and city-wide Board representatives, the extreme deviation from a norm of representation on the Board is +78% (ref. Plaintiffs' Statement of Facts Pursuant to Local Rule 3 (g), para. 14). Using a valid methodology, as proposed by your intervenor-defendant, extreme deviations from norm are shown to be 16.04% for the full Board and 22.99% for the mayorless Board.



*Statement of Frank V. Ponterio of Genuine Issues of Facts*

2. Whether, under the present system of representation on the Board, representatives of 41.7% of the population of the City can control a majority of votes on every budget measure (ref. Plaintiffs' Statement of Facts Pursuant to Local Rule 3 (g), para. 21). Plaintiffs' methodology for computing such percent is invalid since it does not reflect the representation of city-wide members. Furthermore, said 41.7% figure refers only to cases where a simple majority of the mayorless Board is required for a budget override and does not, therefore, account for votes on "every" budget measure. In some cases a two-third vote is required, and, using plaintiffs' methodology, the smallest percent of City population which could control a majority of votes is 68.4%. Using a valid methodology, as proposed by your intervenor-defendant, comparable extreme percent differences from norm are shown to be 22.99% for simple majority votes and 14.76% for two-thirds majority votes.

Respectfully submitted,

/s/ FRANK V. PONTERIO
Frank V. Ponterio, pro se
Intervenor-Defendant
766 Pelton Avenue
Staten Island, NY 10310
(212) 981-7953

Dated: January 24, 1984
Staten Island, N.Y.

*Statement of Frank V. Ponterio*
*of Genuine Issues of Facts*

## CERTIFICATION OF SERVICE

FRANK V. PONTERIO, an attorney duly admitted to practice law in the Courts of New York State, certifies under penalty of perjury that he served the within Statement of Genuine Issues of Facts Pursuant to Local Rule 9(g), Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment on Remand from the Second Circuit, and Affidavit in Opposition to Plaintiffs' Motion for Summary Judgment on Remand from the Second Circuit, by delivering a true copy thereof by hand to the following on February 1, 1984:

Richard Emery, Esq.
New York Civil Liberties Union
Attorney for Plaintiffs

Alan Rothstein, Esq.
Citizens Union of the City of New York
Amicus Curiae

James Hiler, Esq.
Corporation Counsel for the City of New York
Attorney for Defendants

Hon. Robert Straniere
N.Y. State Assembly Member
Intervenor-Defendant

Kathryn Rooney, Esq.
Hon. John Marchi
N.Y. State Senator
Amicus Curiae

/s/ FRANK V. PONTERIO
Frank V. Ponterio

Dated: February 1, 1984